

(1992) 08 OHC CK 0006

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1364 of 1986

Adwait Charan Sahu

APPELLANT

Vs

Divisional Forest Officer, Athmallik and Others

RESPONDENT

Date of Decision : 25-08-1992

Acts Referred:

Orissa Forest Contract Rules, 1966 — Rule 34

Orissa Public Demands Recovery Act, 1962 — Section 10, 2, 4, 4(1), 5

Citation : AIR 1993 Ori 123 : (1992) 74 CLT 772 : (1993) 1 OLR 273

Hon'ble Judges : B.L. Hansaria, C.J.;S.C. Mohapatra, J;A. Pasayat, J

Bench : Full Bench

Advocate : P.K. Misra, N.C. Pati, A.K. Manda and B.N. Misra, for the Appellant;
B.K. Das and Govt. Advocate, for the Respondent

Judgement

Hansaria, C.J.—A proceeding under the Orissa Public Demands Recovery Act, 1962 (hereinafter, "the Act") was initiated against the petitioner for realising a sum of Rs. 8,000/- said to be due as per Rule 34 of the Orissa Forest Contract Rules, 1966 (hereinafter, "the Rules"). This sum was sought to be realised on these facts:--

The petitioner, who is a forest contractor, took part in an auction which was held for selling West Baruni Coppice Coupe No. 5 of Divisional Lot No. 17, His bid was of Rs. 12,100/-. The sale was knocked down in his favour, and he was called upon to deposit the security money. But instead of depositing the amount, he fled away from the auction hall and thus made the sale ineffective. The Divisional Forest Officer, Athmallik, thereafter, in pursuance of paragraph 10(a) of General Conditions of Sale, quashed the auction sale and resold the coupe in a fresh auction which fetched Rs. 4,100/- only. The shortfall, therefore, came to Rs. 8,000/-, and it is this amount for realisation of which the aforesaid proceeding was initiated against the petitioner. In his objection filed, as at Annexure 3, the petitioner took various grounds, but the Certificate Officer rejected the contentions by his order dated 26-10-83 and ordered to proceed with execution

to realise the dues. Feeling aggrieved, an appeal was preferred and the learned Additional District Magistrate by his impugned order dismissed the same after having observed that the case of the appellant might not fall under Rule 34 of the Rules but the action of the Divisional Forest Officer to realise the amount under the terms of the sale notice came under the purview of Section 87 of the Orissa Forest Act, 1972. Feeling aggrieved, this petition has been filed.

2. The petition was once finally heard on 3-5-91. During the course of the hearing, Shri Misra raised various objections to the initiation of the certificate proceeding, one of which was that the amount, if any, was payable to the Government, and so, the Divisional Forest Officer could not have been described as the certificate-holder, as it appeared from the certificate issued by the Certificate Officer, Athmallik, a copy of which is as at Annexure 2. In support of this objection, the learned counsel referred to some decisions of this Court, which we shall note later. To counter the submission advanced by Shri Misra, learned Government Advocate referred to some other decisions of this Court, and the Bench which heard the case observed in paragraph 5 of the judgment as below:--

".....that for every defect, a proceeding (meaning a certificate proceeding) would not be invalid unless the mistake be such as can be said to have caused any prejudice to the certificate-debtor. Speaking for ourselves, we would state that a formal defect like description of a certificate-holder should not invalidate the proceeding unless the same causes prejudice. But this view runs counter to the one expressed in the afore-noted Bench decisions of this Court, more particularly in Orissa Corporation Limited"s case."

As the point raised was thought to be important and as this Court was being confronted with such a question off and on, the Bench felt that the same should be decided by a larger Bench to resolve the conflicting views (which, as it appears now, are more apparent than real) expressed by this Court in the decisions noted in the order passed in that case on 16-5-91. It is because of this that the matter has been placed before this Bench.

3. Before we advert to the decisions of this Court cited earlier and now, it would be in the fitness of things to know what was held by the Privy Council in *Baijnath v. Ramgut* LR 23 IndAp 45, which decision has set the trend to be followed by this Court or, for that matter, by other High Courts which have dealt with a similar matter.

4. In *Baijnath*, what had happened was that a suit had been filed to set aside a sale on the ground of non-compliance with the provisions of Bengal Act No. VII of 1980. The sale had taken place pursuant to a certificate proceeding initiated against the plaintiff under the aforesaid Act to realise an unpaid amount of road cess. While dealing with the maintainability of the objection taken, their Lordships of the Privy Council stated that the provisions contained in the Bengal Act were "very stringent" inasmuch as the proceeding is apparently *ex parte* and

when the certificate is filed it has the effect of a decree against the persons named as debtors in the certificate and when it is served, it binds their immovable property. It was thereafter stated as below at page 54:--

"It is unnecessary for their Lordships to point out the necessity there is when power is given to a public officer to sell the property of any of Her Majesty's subjects that the forms required by the Act which are matters of substance should be complied with, and that if the certificate is to have the extraordinary effect of a decree against the persons named in it as debtors, and to have the effect of binding their immovable property, at least, it should be in a form such as provided by the Act which enables any person who reads it to see who the judgment-creditor is, what is the sum for which the judgment is given and that those particulars should be certified by the hand of the proper officer appointed by the Act for the purpose. If no such certificate is given, then the whole basis of the proceeding is gone."

After stating the law as above, their Lordships examined the facts of the case and found that no certificate at all had been issued by the Collector as the documents pressed into service did not satisfy the requirements of a certificate specified in Section 7 of the Act. It was then observed that if there was no certificate, there could be no notice of the certificate and, therefore, there could be nothing to bind the immovable property of the debtor and enable the Collector to sell the same. Being of this view, the appeal by the defendants was dismissed.

5. The next exercise we propose to do is to analyse on our own the relevant provisions of the Act to find out what importance it has given to the recording of the name of the certificate-holder in the certificate to be signed by the Certificate Officer, which is required to be in Form No. 1. A perusal of that form shows that under its column No. 2, the name and address of the certificate-holder are required to be given.

6. A close reading of the provisions of the Act shows that in a case where any public demand payable to any person other than the Collector is due (the present being such a case), such person may send to the Certificate Officer a written requisition in the prescribed form as laid down in Section 4(1) of the Act. A perusal of the prescribed form (Form No. 2) shows that it does not contain any column giving the name and address of the certificate-holder. In the verification, which has to be made, the designated officer has only to say "I request you to recover the above-mentioned sum of Rs. which, I am satisfied after enquiry, is due from the said in respect of.....". After such a requisition is received, Section 5 of the Act states that the Certificate Officer, if he is satisfied that the demand is recoverable and that the recovery by suit is not barred by law, may sign a certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office. A perusal of the prescribed form (Form No. 1) shows that it not only requires giving of "the name and address of the certificate-holder" in column 2, but the Certificate Officer has also to certify that "the above-mentioned sum of Rs..... is due to

the above-namedfrom..... the above named." Then, in a case of requisition, he has to add "I further certify that the above-mentioned sum of Rs..... is justly recoverable and that its recovery by suit is not barred by law." So, the name of the certificate-holder is incorporated in the form as well as in the certificate by the Certificate Officer, though the requisitioning officer is not required to give out the name of the Certificate holder.

7. We may next note the definition of "certificate-holder" as given in Section 2(c) of the Act, which is as below :--

" "certificate-holder" means the Government or person in whose favour a certificate has been filed under this Act, and includes any person whose name is substituted or added as creditor by the Certificate Officer."

Though the definition speaks about "the Government or Person" in whose favour a certificate has been filed, Section 4 of the Act, which deals with public demand not payable to a Collector, speaks about only "a person" and not about "the Government"; and as per Sub-section (1) of that section, such a person (meaning any person other than the Collector to whom a public demand is due) may send to the Certificate Officer a written requisition in the prescribed form. So, the requisition, which is the starting point of initiation of the proceeding under the Act in a case of the present nature, has to emanate from a person, and such a person would be entitled in law to send the requisition even if the public demand be payable to the Government. So, even though Schedule I of the Act mentions separately about dues payable to the Government and a Government Officer, to which aspect our attention is drawn by Shri Misra, the same would not automatically mean that in the requisition made to realise the dues, the requisitioning entity has also to be the Government or the Government Officer, as the case may be, when Section 4(1) of the Act dealing with requisition of certificate in such cases mentions only about a person.

8. We would hasten to add that the word "person" in Section 4(1) of the Act cannot, however, mean that any person can send a requisition to realise public demand even if the amount is due to the Government. It is apparent that the person concerned must be one who could certify that the amount is due to the Government, the particulars of which must also be known to him. These requirements follow from the contents of the verification required to be made in the requisition certificate, which has to be in Form No. 2. (This Form incorporates the requirement of Rule 1 of Schedule II to the Act dealing with "signature and verification of requisition for certificate"). This close connection of the person making the requisition is further necessary, because, before the Certificate Officer decides to sign a certificate, he must be satisfied, as stated in Section 5 of the Act, that the demand is recoverable. A Certificate Officer would not be so satisfied unless the requisition has been received from a proper person. After the Certificate Officer is so satisfied, he signs the certificate incorporating the name of the certificate-holder, which apparently would be of that person who had sent the requisition. It is important to know that the phrase used is "certificate-

holder" and not "certificate-creditor". The definition of "certificate-holder" shows that the person need not necessarily be the creditor. This is apparent from the fact as per the definition of the expression "certificate-holder" it includes "any person..... added as creditor" by the Certificate Officer. So, the person on whose behalf the certificate is filed (this being the main part of the definition) need not necessarily be the creditor. Of course, a perusal of the contents of the certificate which is required to be given by the Certificate Officer in Form No. 1 shows that the person who is named as certificate-holder is the person to whom the amount is due. It is because of these two provisions, which have to be read together, that it has been stated earlier that the certificate-holder need not "necessarily" be the creditor. This does not at all mean that there is no importance in the name of the certificate-holder as given in the certificate. The importance is apparent from the fact that Section 10 of the Act visualises addition, omission or substitution, inter alia, of the name of any certificate-holder. Had there been no importance in the name of the certificate-holder, such a provision in Section 10 would not have been thought necessary.

9. We have said about the requirement of the certificate-holder's name to be correct, because, if the name of a wrong person is given, the certificate-debtor may be misled and he may not be able to raise his limits, objections permitted by Section 8 of the Act, read along with what has been stated in Form No. 3. Though these provisions do not expressly lay down that the liability can be denied on the ground of the wrong name of the certificate-holder finding place in the certificate, we have no doubt in our mind that keeping in view the stringent provisions of the Act, there should be no misapprehension left in the mind of the certificate-debtor to know as to at whose behest the amount is being realised and on what count. If, therefore, there be any incongruity or confusion between the name of the certificate-holder as given in the certificate and the particulars of the public demand, which are required to be incorporated in column 6 of Form No. 1, it is apparent that the limited opportunity made available to the certificate-debtor by Section 8 of the Act (read with Form No. 3) would not be fully meaningful and he would not be able to protect his interest well and fully. But then, it is only in a case of incongruity or confusion that a wrong name of the certificate-holder should be the deciding factor in judging about the infirmity of the proceeding, because in that case alone, it can reasonably be said that the "matters of substance" have been overlooked. It is in this sense that we read the observation in Baijnath's case to the effect that "the forms required by the Act, which are matters of substance, should be complied with". We have taken this view because every little thing mentioned in the forms cannot be regarded as a matter of substance or so sacrosanct that omission or defective description of any prescribed matter would render the proceeding invalid. When the case was being heard, one of us (S. C. Mohapatra, J.) had asked Shri Misra to illustrate this point, whether omission of a number of columns given in Form No. 1 or Form No. 2 would render the certificate or requisition invalid? (This question had been asked to bring home the point that unless prejudice is caused, the mistake,

defect or omission should not matter). Learned counsel had fairly stated, it would not. So, mind shall have to be applied to the nature of mistake, omission or defect, and only a substantial mistake, omission or defect has to weigh with a Court.

10. It would be useful to remind that the ; requisition which is sent to the Certificate Officer is not required to contain the name of the certificate-holder, but the same is incorporated in the certificate by the Certificate Officer (really, by his office) and, as already stated, he would normally put the name of that person as the certificate-holder who had sent the requisition; but then, it would be doing injustice to the person to whom public demand is due to set at naught the proceeding initiated for realising the due on the ground that the correct name of the certificate-holder has not been incorporated in the certificate. We have said so, because it is the settled law that for the mistake of a Court, a party should not suffer. This is expressed by the maxim "*actus curiae neminem gravabit*", which means that the act of a Court shall prejudice no man. In a case where the Certificate Officer puts a wrong name of the certificate-holder in the " certificate, it would be open, according to us, to the Certificate Officer, on the same coming to his notice or knowledge, to correct the mistake on his own without the party concerned invoking Section 10 of the Act, which a party may not be inclined to do, because the alteration etc. made in the certificate pursuant to that power is "subject to the law of limitation", which might have expired in some cases by the time the alteration is sought for. The inherent power to correct a mistake can, however, be exercised at any time. We need not elaborate on this point much, as more than a century back it was said by Bowen, L.J., in *Mellor v. Swire* (1885) 30 CD 239, that "(g) very Court has inherent power over its own, records so long as those records are within its power and that it can set right any mistake in them." This observation was cited with approval by the apex Court in paragraph 11 of *Samarendra Nath Sinha and Another Vs. Krishna Kumar Nag*, .

11. We would deal with another point. The same relates to the observation made by the Privy Council in *Bajinath's* case that the filing of the certificate has "the effect of a decree" against the persons named as debtors in the certificate. That observation was made, according to us, because Section 8 of the Bengal Act had stated specifically that every certificate made under the provisions of Section 7 shall have the "force and effect of a decree of a civil court". We do not find such a provision in the Act. Even so, we have no doubt that the filing of a certificate followed by service of the notice of the certificate has very serious consequence, inasmuch as after service of notice, the proviso to Section 7 of the Act permits the Certificate Officer even to attach the whole of the immovable property belonging to the certificate-debtor. So, absolute care has to be taken before signing of the certificate. Then, even if the filing of the certificate can be said to have the effect of a decree under the Act also, we would state that where there is any ambiguity in the decree, the executing Court may, and shall construe the decree in order to ascertain its precise meaning, and for this purpose it may refer to the judgment and the pleadings in the case. (See *Topanmal Chhotamal Vs.*

Kundomal Gangaram and Others, (para 4); and Bhivan Vaju v. Solanki Hasuji AIR 1977 SC 1371 (paragraph 19)). It may also be stated, as observed by a Bench in Taraprasanna Ganguly and Others Vs. Naresh Chandra Chakrabarty and Others, , that a reasonable construction must always be put on a decree and the Court should always lean against a construction which renders a decree inexecutable. The same view was expressed in Trailokhyanath v. Sarat Kumar AIR 1920 Pat 192, in which it was stated that a decree must be construed in a fair and reasonable spirit so as to advance and not to impede its execution.

12. While on the question of wrong name of the certificate-holder, we may deal with the submission of Shri Misra that if a suit is filed by a wrong person, the same is bound to be dismissed and no relief can be claimed on the basis of such a suit. To bring home this submission, the learned counsel has first referred to The State of Kerala Vs. The General Manager, Southern Railway, Madras, , in paragraph 5 of which the filing of the suit against the railway administration for realising a sum of money by impleading the General Manager of the Railway as a party was held to be not maintainable, because the suit was required to be filed making the Union of India as a defendant. He has next referred to Shri Ranjeet Mal Vs. General Manager, Northern Railway, Baroda House, New Delhi and Another, in which also it was observed that the proper person to be impleaded as an opposite party in a writ petition filed to challenge an order of removal from the service of the Union (the petitioner being an employee of the Northern Railway) was the Union of India and not the General Manager or any other authority of the railway administration. As the Union of India had, however, not been impleaded as a party, the petition was dismissed.

13. As to the aforesaid decision we would say that the same dealt with the question as to who is a necessary party or has to be impleaded as a defendant in a writ proceeding or suit. It is apparent that without the necessary or appropriate party being before the court, no effective order can be passed, as in the absence of such a party, the order passed would not be binding on it, because of which the relief, if any, granted would be inexecutable. In the case at hand, we are concerned with an entirely different question -- the same being an (inadvertent) mistake of not mixing the correct person as the certificate-holder in the certificate. The closer analogy with the aforesaid cases would be one where an unauthorised person signs the requisition, in which case it can be said that he having no authority in law could not have set in motion the Act against the debtor.

14. While on the aforesaid subject, we may say that the Divisional Forest Officer who had signed the requisition cannot be said to be an unauthorised person or a foreigner to the subject-matter. We have said so, because the dues which were sought to be realised from the petitioner were pursuant to some action taken by the Divisional Forest Officer himself. This apart, a perusal of the Agreement Form appended to the Orissa Forest Contract Rules, 1966 would show that the same is required to be signed by a "Forest Officer" acting for and on behalf of the

Governor of Orissa. As the dues in question were sought to be realised by pressing into service rule 34 of the Rules, we are of the opinion that the Divisional Forest Officer had rightly signed the requisition. It may be stated that Rule 1(1) of Schedule II of the Act permits any person, who is proved to the satisfaction of the Certificate Officer to be acquainted with the facts of the case, to sign and verify the requisition. The Divisional Forest Officer has to be regarded as such a person in the present case.

15. At this stage, we may also deal with another submission of Shri Misra that the appellate authority held that the dues could be realised with the aid of Section 87, of the, Orissa Forest Act, 1972, after stating that the case did not fall under rule 34 of the Rules. The learned counsel submits that Section 87 of Forest Act deals with recovery of money due to the Government, and so, the name of the Government should have also found place as the certificate-holder. As to this submission, we would observe that under rule 34 of the Rules also, it is the Government who is entitled to realise the dues as arrears of land revenue, and so, the view taken by the appellate authority that the case fell within the purview of Section 7 of the Orissa Forest Act and not within rule 34 of the Rules is not material.

16. With these observations of our own relating to the provisions of the Act touching the question of the name of the certificate-holder, the real purport of Baijnath's cast and the submissions of Shri Misra appertaining to the recording of the name of the Divisional Forest Officer in the present case as the certificate-holder, we may advert to the decisions of this Court brought to our notice by learned counsel for both sides. The first decision is that of a Bench in Kahadeblal v. Certificate Officer ILR 1959 Cut 315. In that case, it was observed in paragraph 7 that certificate proceedings are in the nature of execution proceedings and, therefore, the provisions in respect thereof have to be strictly complied with, as the corresponding provisions under Order 21 of the CPC have to be complied with, in execution of decrees. against judgment-debtors. It was also observed that the provisions of the Act required to be complied with are mandatory. Being of this view, and having noted that in the certificate, as issued, the name of the petitioner as certificate-debtor had not found place, despite which the case was being pursued against him, the Bench opined that this could not be done, and so, the certificate case against the petitioner was quashed after having observed that allowing the proceeding to continue against the petitioner on whom the notice of the certificate had been served would amount to this: "(t)hat a decree against a judgment-debtor was being sought to be executed against another individual, who was not liable under the decree and, in fact, had nothing to do with the decree". This shows that the point with which we are confronted was not at all before the Bench in that case; and the only importance of that case is that strict compliance with the requirements of law was emphasised.

17. The next case in point of time is of Saudamini Works v. State of Orissa ILR

1959 Cut 365. After referring to the aforesaid case of the Privy Council, it was observed at page 381 that a certificate proceeding is an extraordinary remedy a coercive measure for realisation of public demand. Apart from this observation, that decision has no other bearing for on the case at hand.

18. In *Mahammed Issaque v. State of Orissa* (1960) 26 CLR 592, need for strict construction was emphasised and it was observed that if a case is not covered by the items enumerated in Schedule I of the Act, the demand cannot be taken to be a public demand, because of which a Certificate Officer would have no jurisdiction to issue a certificate to realise any amount payable on account of that demand. At page 595, it was also observed that a summary procedure was laid down in the Act for the speedy realisation of public demand, because of which care shall have to be taken to see that the cases before the court are really such where ordinary laws of the land have to be ignored.

19. In so far as *Sibapada Ghose Mandal and Others Vs. Union of India (UOI) and Another*, is concerned, the only importance of that case for our purpose is that mind was applied to the question as to who could really be regarded as a certificate-holder -- the "Collector or any person other than the Collector. This aspect was required to be determined to decide whether the Certificate Officer had jurisdiction to cancel the certificates, which had been filed to realise the arrears of the Income Tax dues.

20. After about half a decade's gap came the decision in *Chandrasekhar Sahu v. State of Orissa* 1971 (2) CWR 541, in which two-certificate proceedings initiated against the petitioner were quashed because the initiation of the same was held to be bad inasmuch as in one case the certificate-holder was said to be the Officer-in-charge of Development, Bonai, and in the other, the District Panchayat Officer, Sundargarh, whereas under the Act in question, the Collector was deemed to be the person to whom the amount recoverable was payable, in which case as per the Act or its predecessor Act, no requisition was necessary and the Certificate Officer was merely to sign a certificate in the prescribed form. The two certificates, however, did not show that the money was payable to the Collector; instead, the two aforesaid persons were described as certificate-holders. Because of this fact and because of the requirement of law that the procedure laid down under the Act must be strictly followed and the columns of the certificate must be properly filled up, the proceedings were quashed. Though this case is close to the one at hand, the ratio of that case has no application here because the two officers who were shown to be certificate-holders had no manner of connection with the Collector, and this apart, if the due be payable to the Collector, the Act visualises a different procedure doing away altogether with any requisition, whereas in that case the proceedings had been initiated on requisition from two named officers, and thus, the procedure laid down by the Act was almost given a go bye which is not so in the case at hand.

21. The decision in *Kapileswar v. State of Orissa* (1972) 38 CLR 948, is important for our purpose. There the Divisional Forest Officer had sent the requisition

though the compensation which was sought to be re-covered through the certificate proceeding under the two agreements entered into with the State of Orissa was payable to the State Government. It was, therefore, observed in paragraph 4 that the Divisional Forest Officer could not really be the certificate-holder as money was payable to the State of Orissa and as such, it was the State of Orissa which should have been shown, as the certificate-holder. But then, it is important to note that the proceedings were not quashed primarily on this ground, as would appear from what was observed in paragraph 5, but because the Bench felt that the certificate should have been clear and "detail must have been properly provided in column 6 of the certificate, in view of the averment made by the petitioner that no notice of any assessment of compensation had been ever served upon him nor was compensation determined in his presence, so as to give a clear picture of the particulars of the public demand for which the certificate was signed. This apart, as the agreements related to two units (14-A and 14-8), the particulars given in the certificate did not enable the petitioner to know if compensation had been raised in respect of both the units and under what heads. The Bench, therefore, observed that if details had been given, the petitioner could have, disputed his liability, even within the limited sphere of Section 6 of the Act. For these reasons; the Court felt satisfied that the certificate as laid could not be sustained and so the same was quashed. We have dealt with the reasons for quashing in detail because, as would appear from what has been stated later, in First Appeal No. 166 of 1975, Madan Mohan Mohanty v. State of Orissa disposed of on 23-7-1990, a learned single Judge of this Court held the certificate of that appeal as null and void, because the certificate was in the name of the Divisional Forest Officer whereas the dues were payable to the State Government, after having noted only what was stated in paragraph 4 of this decision (Kapileswar), and not what was further stated in paragraph 5.

22. The next decision to be noted can be said to be the sheet anchor of the petitioner's case. That case is of Orissa Corporation Private Limited v. State of Orissa 1974 (1) CWR 642, in which the Certificate Officer had signed the certificate on the basis of a requisition issued by the Collector of Cuttack. In the requisition, the claim was laid on account of the dues which had become payable to the Government because of an agreement entered with the Government by the petitioner which had specifically stated that the money would be recoverable by the State Government. But in the certificate the Collector was shown as the certificate-holder, which, however, appeared to have occurred because of some mistake in the office of the Certificate Officer inasmuch as in column 5 of the requisition the amount was said to be payable to the Government and in the verification also the amount had been described to be the outstanding Government dues. The Bench after observing that the proceeding under the Act is a very strict proceeding as indicated in Baijnath's case and because the form prescribed under the statute is of substantial significance, any mistake in which particularly in regard to a material particular would vitiate the proceeding, required the Certificate Officer to file a fresh certificate in his court on the basis

of the requisition received from the Collector. This view was taken after pointing out that even if the Collector as an agent of the State Government was entitled to ask for recovery of the amount and thus sent a requisition, the State Government was to be shown as the certificate-holder. We say with respect that the Bench arrived at the aforesaid conclusion without analysing the matter fully and without adverting to various provisions of the statute, to which we have referred above, having a material bearing on the question. The Privy Council's decision in *Bajinath* wherein it was observed "(t)hat the forms required by the Act, which are matters of substance, should be complied with" should, according to us, be understood to mean that it is the substance of the matter which counts and not the form, for reason already given. Though the Bench correctly stated the law that mistake in the form in regard to a "material particular" would vitiate the proceeding, the Bench did not spell out as to why giving of the name of the Collector as the certificate-holder in Form No. 1 was a material mistake; the only thing stated was that it was a mistake. So, the view taken cannot be said to be founded on substantial ground or strong reason, really any reason.

23. According to *Shri Misra*, the case of *Kapila Charan Rout and Others Vs. Sub-Divisional Officer, (Civil) and Another*, shows the importance this Court has attached to the strict compliance with the provisions of the Act because in that case even the sale which had taken place pursuant to the initiation of the certificate proceeding had been set aside because the requirements of the Act had not been strictly complied with. The learned counsel urges that we should also show the same anxiety to see that the requirements of the Act are strictly followed in letter and in spirit.

24. Let us see what had happened in that case and why the sale was set aside. The amount which was sought to be realised through the certificate proceeding was one which had allegedly fallen due pursuant to some works with which the petitioner was entrusted -- the work being related to some improvement undertaken as a part of the drought relief programme started by the Sub-Divisional Officer, Bhadrak. So, the amount had become due to an officer other than the Collector, because of which Section 5 of the Bihar and Orissa Public Demands Recovery Act (which was repealed by the Act) required a written requisition to be sent in the prescribed form to the Certificate Officer; and the requisition was required to be signed and verified in the prescribed manner. But in none of the seven cases a requisition answering the requirement of the Act was to be found. Not only this, the certificate which was subsequently signed by the Certificate Officer stated that the recovery by the statute was -barred by law whereas the statute required that the Certificate Officer would sign the certificate on his being satisfied, inter alia, that the recovery by the statute was not barred by law. Further, the amount sought to be realised was held to be not "public demand", because of which the Act could not have been pressed into service at all. (This ground was, of course not available in one case because by the date this case was instituted (20-2-1970), the present Act had come into force, according to which registration of the instrument is not necessary, as was

required by its predecessor Act "(Bihar and Orissa Public Demands Recovery Act, 1914), which was pressed into service, on which ground the money payable to the Sub-Divisional Officer (a Government Officer) was not regarded as "public demand", as the instrument at hand had not been registered.). These are the three reasons because of which the sale was set aside. The case at hand is much removed from what had confronted this Court in Kapil Charan.

25. The next decision is by a learned single Judge of this Court which is strongly pressed into service by the learned Government Advocate -- the same being *State of Orissa v. Susil Kumar* 48 (1979) CLT 561. There, some dues had become payable to the State Government whereas in the certificate the Collector was shown as the certificate-holder. An objection was, therefore, taken that the certificate proceeding had not been properly initiated. The learned Judge observed that as the agreement had been signed by the District Magistrate and the Collector "acting in the premises for and on behalf of the Governor of Orissa", which showed that the Collector was acting from the very inception as the representative of the Governor, and so, the Collector was competent to file the requisition as had been done in that case, though the Collector should have mentioned therein that he was acting in the premises for and on behalf of the Governor of Orissa, who is the certificate-holder. This defect in the description of the certificate-holder in the requisition was, therefore, regarded as only "nominal, technical and clerical", because of which it was held that the certificate proceeding could not be quashed and struck down. Instead, the learned Judge ordered to amend the column in the requisition to show that the Collector had filed the certificate proceeding for and on behalf of the Governor, in the present case also, as would be pointed out later, the agreement for purchase and sale of forest produce is required to be signed by a "Forest Officer" acting "for and on behalf of the Governor of Orissa" as would appear from the form of agreement as given in the Orissa Forest Contract Rules, 1964, and so, what has been stated in *Susil Kumar* has direct application to the case at hand. "

26. We have about half a decade of lull again after the aforesaid decision, as the next case to be brought to our notice is that of *Sri Krupasindhu Behera Vs. State of Orissa and Others*, wherein after referring to *Orissa Corporation's* case, it was pointed out in paragraph 6 that the form prescribed under the statute is of substantial significance and any mistake in the form "particularly in regard to a material particular" would certainly vitiate the proceeding. After noting this, the principle was applied to the case at hand which was related to collection, inter alia, of penalty under the sales tax law of the State, and wherein the provision of the Orissa Sales Tax (Amendment) Act, 1975 permitting realisation of dues was invoked which required issuance of a certificate by the Tax Recovery Officer. The Bench, however, noted that the statutory notice which was required to be given by the Department had contained vacant columns relating to penalty. Because of this, the court observed that the penalty as indicated in the notice could not be recovered as the incomplete notice did not enable the petitioner to know the break-up of the penalty and the date of receipt of the assessment orders which

informations were vital to deny liability. Then, no demand notice had been served to pay a part of the penalty which was also sought to be realised by initiating the certificate proceeding. So, what had weighed with the court was omission of material particulars in the statutory notice or lack of it, and not a mere misdescription of same or an insubstantial mistake.

27. *Bhagaben Charan v. State of Orissa* 65 (1988) CLT 505, also required strict compliance with the provisions of the Act because the certificate was regarded as a decree because of which it was opined that the Certificate Officer as well as the requisitioning authority must apply their mind to the requisites. What had happened in that case was that the demand was payable to the State Government and so requisition was necessary; but the Civil Supplies Officer who was the requisitioning authority had only sent a draft drawn in Form No. J and that too on the body of the form. After receipt of such a requisition, what the Certificate Officer did was merely to pass an order stating "Requisition received and signed. Register and issue notice u/s 6 for 30-8-1976." The court pointed out that in doing so, the Certificate Officer completely forgot what was required of him to do by the Act before signing the certificate in Form No. 1, which enjoined on the Certificate Officer to certify certain things which we have noted above, all of which were left blank in the certificate with which the Court was seized in that case. The Court pointed out that the certificate to be furnished at the foot of Form No. 1 is not a meaningless formality and as the relevant particulars in the certificate had been left blank, the Court opined that the same was not in accordance with law and so quashed the certificate proceeding. The facts of the present case are poles apart from that case inasmuch as there both the requisition and the certificate were not in accordance with law whereas in the present case the only defect is in the name of the certificate-holder.

28. The year 1988 saw another decision of this Court and that was in *Sachindranath Das Vs. Sales Tax Officer and Others*, . Therein also, the Court emphasised the need of strict construction and the requirement to fill in the form duly. The only lacuna in that case was an arithmetical error which was not regarded to be a material defect in the certificate because of which no objection was taken to the continuance of the certificate case. In this connection we shall like to mention what was observed in paragraph 7. As that case related to realisation of sales tax dues, the Bench pointed out in that paragraph that to satisfy the conscience of the Court the petitioner had not produced any document to show that the sales tax dues were not outstanding; on the other hand, vague and unsustainable plea was taken that all papers pertaining to sales tax were destroyed in flood, as to which plea the Court stated that the same could not be entertained when called upon to exercise its extraordinary jurisdiction. It was emphasised that a person should not be allowed to avoid payment of the legitimate dues of the Government which is a public revenue on a vague and unsustainable plea. We have mentioned about this aspect of the matter because we would have occasion later to point out that while examining a matter like the one at hand, a writ court would like to exercise its power where it

would think that really injustice has been caused to the petitioner.

29. In the year 1989 also two decisions came to light which projected for the first time the idea of prejudice, which lies at the back of this reference. These Bench decisions are : Utkal-Distributors Pvt. Ltd.. v. State of Orissa 68 (1989) CLT 556, and Aswini Kumar v. Sales Tax Officer 68 (1989) CLT 656, judgments in both of which were delivered by one of us (S. C. Mohapatra, J.) and is quick succession -- the first case having been decided on 14-7-1989 and the second on 25-7-1989. While recognising in paragraph 6 of Utkal Distributors' case that the recovery of dues under the Act is not a normal process but is extraordinary, because of which the requirement of law must be strictly examined, it was observed that:--

"Certificate Officer is required to be careful before signing the certificate to examine that all the particulars are properly filled in where-from the certificate debtor can get a clear picture of the dues recoverable from him. In case of any deficiency in the certificate which does, not give a clear picture, prejudice is caused to the certificate debtor to raise objection on the limited grounds provided for u/s 8 of the Act. Accordingly, recovery under such certificate is not to be allowed."

Being of this view, the Court perused the certificate as signed by the Certificate Officer and noted the defects found therein in para- graph 7 of the judgment and it was then stated in paragraph 8 that the realisation of the dues under the certificate was "prejudicial to the petitioner", and so, the impugned orders were not sustained.

30. In Aswini Kumar's case also (which drew heavily from Utkal Distributors), the Court looked into the certificate and found that the same contained many defects because of which it was opined that the recovery of dues on the basis of such a certificate ought not to be permitted. But then, as the Court was satisfied that the defects in the certificate might have been on account of ministerial acts, an opportunity was given to correct the certificate and thereafter to proceed in accordance with law.

31. Shri Misra has described the above cases as "lonely furrows". That they are. But then, a new voice or a dissenting voice sometimes become the voice of the majority. There can be no better example of this than the dissenting judgment given by Lord Atkin in *Liversidge v. Anderson* 1942 ACJ 206, who knows that some day the dissenting voice of Khanna, J. in *Additional District Magistrate, Jabalpur Vs. Shivakant Shukla*, may become the view of the apex Court?

32. The last decision of this Court to be noted is of last year and the same is *Paramjit Mohanty Vs. State of Orissa and Others*, . In that case the certificate proceeding was set aside because there was no valid requisition inasmuch as the Additional District Magistrate had only addressed a letter to the Special Certificate Officer for realisation of the dues in question without any verification as required by rule 1 in Schedule II of the Act. As the verification required to

state that the requisitioning authority was satisfied by enquiry that the amount stated in the requisition was actually due and as this requirement was held to be mandatory, and with respect rightly, deviation from the same invalidated the certificate because of which it was quashed. Thus the defect in that case was of such a magnitude which could not have been ignored by any court.

33. We have so far confined ourselves to the territorial jurisdiction of this State. Let us now have a sortie, a little foray, outside. But here too we shall not travel far and wide but would visit our neighbouring States of Bihar and West Bengal. The first decision we shall note is that of a learned single Judge of Calcutta High Court in *Sudhir Chandra Chakravarty Vs. Sudhangshu Kumar Choudhury and Others*, . Therein after bearing in mind what was stated by the Privy Council in *Baijnath's* case, the sale pursuant to the certificate proceeding was held to be illegal because there was no legal certificate in existence inasmuch as none of the items in the form of the certificate had been filled up -- the same was really left blank. It was, therefore, stated that the Certificate Officer had not chosen to follow the statutory directions, because of which the sale was set aside. This shows that the defect found was very very material.

34. Another decision of the Calcutta High Court is by a Bench and was rendered in *Abenindra Kumar v. A. K. Biswas* AIR 1954 Cal 155. Therein the liability sought to be recovered through the certificate proceeding was one incurred under the Income Tax Act. It was, therefore, observed that the liability was of Union of India, and so, the proper description of the certificate-holder should have been, as stated in paragraph 17, the Government of India or any of its subordinate officers in the Income Tax Department. But then, the name of the certificate-holder was given as State Government, which was stated to be wrongly done. It is important to note that even though the dues were payable to the Union of India, the observation was that even a subordinate officer of the Income Tax Department could be stated to be certificate-holder as the amount sought to be recovered was dues payable under the Income Tax Act. If this analogy is applied to the case at hand, it can well be said that the Divisional Forest Officer could also be described as the certificate-holder as the dues, though payable to the State Government, were relatable to what had happened in an auction sale conducted by the Divisional Forest Officer under the provisions of the Orissa Forest Contract Rules, 1966. This apart, in the Calcutta case, the proceeding was quashed not only because of the above defect but also because particulars of the public demand required to be mentioned in the fourth column of the certificate had been left blank. Then, the copy of the certificate which was served upon the petitioner had not been signed by the hand of the Certificate Officer but merely bore his lithographic signature. So, it was not a case of setting aside of the proceeding merely because of defective name of the Certificate-holder.

35. Now let us see what view had been taken by the Patna High Court. The first decision of that High Court brought to our notice was in *Lachmi Kant Deo Prasad Singh Vs. Rameshwar Chaudhury and Others*, , in which after citing *Baijanath's*

case, the sale pursuant to the certificate proceeding was quashed because the notice served on the certificate debtor did not accompany the copy of the certificate and the form in question did not contain the certificate of the Certificate Officer certifying the correctness of the demand. Thus, very material omission were there.

36. *Sasamusa Sugar Works Ltd. v. State of Bihar* AIR 1955 Pat 49, is a case where the Court came to the conclusion that the Certificate Officer had either reached no satisfaction that the amount was payable to the Collector, or that this satisfaction was arbitrary, whereas under the Act the satisfaction of the Certificate Officer that some public demand is payable is a condition precedent to the exercise of the power. There can absolutely be no two views in such a case.

37. Time has come to conclude. Before we do so, we shall note only one more submission of Shri Misra. The same is that we should not do anything which would upset a view long taken by this Court. That this should be the approach of a Court was pointed out by a Full Bench of Punjab and Haryana High Court in *Raj Kumar and Another Vs. Amer Singh and Others*, (to which our attention is drawn by Shri Misra) by stating that a view long hold in the jurisdiction is not to be upset except on the patent grounds that the same is either palpably wrong or is of a kind that following it would be perpetuating an error and resulting in public mischief, We have also noted that in *Inder Mohan Lal Vs. Ramesh Khanna*, the apex Court noted in paragraph 16 the observation made in *Raj Narain Pandey v. Sant Prasad Tewari* AIR 1973 SC 391, that in the matter of interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed inasmuch as a different view would not only introduce an element of uncertainty and confusion but would also have the effect of unsealing transactions which might have been entered into on the faith of those decisions. In *Governing Body of Dayanand Anglo Vedic College Vs. Padmanabha Padhy and Others*, , a three-Judge Bench the decision in *Inder Mohan's* case being by a Bench of two learned Judges, though *Raj Narain's* case was decided by a three-Judge Bench however, noted in paragraph 20 the observation of Lord Loreburn, L.C. in *West Ham Union v. Edmonton Union* (1908) ACJ 1, to the effect that where old authorities, on the strength of which many transactions may have adjusted and rights determined, are plainly wrong, and the reasonings on which they were based were disclosed to be weak, it would be the duty of the House to overrule them. Some other English decisions were also noted in paragraph 21 wherein plainly wrong decisions which had held the field even for 40 years were overruled though that decision had been frequently acted upon.

38. We need not labour much on this point because a Constitution Bench of seven Judges in *Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others*, had overruled as many as six of the earlier decisions of the Court on the question of meaning of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. This apart, so far as the case at hand is

concerned, except for what was held by a Bench in Orissa Corporation's case in 1974 and subsequently by a learned single Judge in Madan Mohan Mohanty's case in 1990, in no other decision of this Court (to which our attention had been drawn or which have come to our notice), the submission advanced by Shri Misra had found favour. Of course, all the decisions had emphasised the need of strict construction, with which we also agree, without any hesitation. That however, is not, and cannot be, the end all and be all of the matter.

39. Before closing our discussion, we would refer to another aspect of the matter already indicated. The same is that a writ court springs into action when it finds that real injustice has been done to the person approaching it. The exercise of power under Article 226 being a discretionary, the same is not exercised to set right more errors of law which do not occasion substantial justice. A writ court interferes only when there is grave miscarriage of justice or flagrant violation of law, as stated by a Constitution Bench in *D.N. Banerji Vs. P.R. Mukherjee and Others*, (paragraph 5) and by a Division Bench in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, (paragraph 14).

40. Bearing in mind all that has been stated above, we would hold that naming of the Divisional Forest Officer as the certificate-holder in the present case cannot be said to have introduced such an infirmity in the proceedings which would warrant setting aside of the same. The following are our reasons for this conclusion :

(1) The Divisional Forest Officer had the authority in law, according to us, to set the Act in motion by signing and verifying the requisition in Form No. 1 inasmuch as the dues are relatable to short-fall occurring because of re-sale of a forest coupe which was put in auction by him.

(2) The Divisional Forest Officer can well be said to be an agent of the State Government in a case of the present nature inasmuch as the agreement which has to be signed in| case of concluded contract relating to sale of a forest coupe has to be so done by a Forest Officer acting for and on behalf of the Governor of Orissa, the Divisional Forest Officer is such an officer.

(3) The naming of the Divisional Forest Officer as certificate-holder in Form No. 1 can be said to be a mistake on the part of the Certificate Officer for which act no prejudice, should be caused to the right person.

(4) The wrong description being an act of mistake on the part of the Certificate Officer, it could be corrected suo motu at any time without requiring the concerned person to invoke Section 10 of the Act which attracts the provisions of limitations. So, not much importance should be given to the mistake.

(5) The naming of the Divisional Forest Officer as the certificate-holder has not denied any right to the petitioner inasmuch as no grievance about the same was raised by him in his objection Annexure 3 running into four typed pages which he had filed before the Certificate Officer after the notice of the certificate was

served on him.

(6) The defect in question is one of form and not of substance, to put it differently, the defect is not material.

(7) The particulars of the dues having been fully given in the certificate, the right available to the petitioner u/s 8 of the Act was in no way affected because of the naming of the Divisional Forest Officer as the certificate holder.

(8) It would be not in consonance with larger public interest to stand in the way of realisation of legitimate Government dues which form part of public exchequer on insubstantial pleas.

(9) If the certificate has to be regarded as a decree, it must be so construed as to make it executable; but this would not be so, if minor defects are given prominence, which would impede or stultify the execution.

(10) A certificate-holder need not necessarily be a "certificate-creditor".

(11) Even in case of dues payable to the Government, requisition has to be by a "person". The word "person" as defined in Section 2(33) of the Orissa General Clauses Act, 1937 includes only any company or association or body of individuals, whether incorporated or not. Government would not come within the fold of this definition.

(12) Of all the decisions of this Court, only in two, namely, (1) Orissa Corporation Ltd., 1974 (1) CWR 642 and Madah Mohan Mohanty (First Appeal No. 166 of 1975 disposed of on 23-7-1990), the proceeding was quashed on the ground that the certificate-holder's name was not correctly given in the certificate. In Kapileswar 38 (1972) CLT 948, the proceeding had been set aside mainly on the ground that the certificate did not give a clear picture of the particulars of the, public demand. The fact that in the certificate the name of the Divisional Forest Officer was given was not the main reason. In all other decisions, whose number is as large as 13, the proceedings had been quashed (in those cases where it was so done) either on the ground of vital omission in the certificate ILR 1958 Cut 315, or the dues sought to be realised through the certificate proceeding was not "public demand" ILR 1959 Cut 365 and 26 (1960) CLT 592, or initiation of the certificate proceeding itself being bad because of the requisition by incompetent person (1971) (2) CWR 541, or absence of essential step, like lack of requisition or valid requisition Kapila Charan Rout and Others Vs. Sub-Divisional Officer, (Civil) and Another, and Paramjit Mohanty Vs. State of Orissa and Others, , or omission of material particulars in the certificate Sri Krupasindhu Behera Vs. State of Orissa and Others, , or absolute casualness in sending the requisition and non-awareness of the provisions of law by the Certificate Officer 65 (1988) CLT 505, or vital omissions or defects in the certificates 68 (1989) CLT 556. This shows the interference was on strong and substantial reasons, and not on shallow, meaningless and insignificant grounds.

(13) No injustice, far less substantial injustice, was caused to the petitioner

because of the naming of the Divisional Forest Officer as certificate-holder.

41. We would summarise our view by stating that neither on principle nor precedent, we would be justified in quashing the proceeding on the ground in question. According to us, in such a case a writcourt would be justified to set at naught the long journey undertaken by a certificate proceeding only where the omission, mistake or defect in the form(s) has prejudiced the concerned of person; any and every omission, mistake or defect cannot be ground to interfere it cannot be the end all and be all of the matter. And to decide about prejudice, various aspects of the matter shall have to be borne in mind, as we have done here.

42. So, we answer the reference by stating that the first objection raised by Shri Mistra --the same being non-maintainability of the certificate proceeding because of the naming of the Divisional Forest Officer as certificate-holder is not sustainable. We also state that the view taken by a Bench of this Court in Orissa Corporation's case 1974 (1) CWR 642 and by a learned single Judge in Madan Mohan Mohanty's case, F.A. No. 166 of 1975 disposed of on 23-7-1990, is not correct, and so, we overrule these decisions, As to K apile-swar's case 38 (1972) CLT 948, we would say that the same is not required to be overruled because the decision in that case is not based only on the ground or even primarily on the ground that the Divisional Forest Officer had been named as certificate-holder, as already noted.

43. Let the records be now placed before the appropriate Division Bench to dispose of the petition by recording its views on the remaining two objections taken by Shri Misra in the case.

44. Before parting, we put on record our appreciation for the very able assistance we received from the learned counsel of the parties, particularly Shri Misra, in answering the aforesaid important question.

B.S. Mohapatra, J.

45. I agree.

A. Pasayat, J.

46. I agree.