(2002) 02 JH CK 0102

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1119 of 2002

Anil Kumar APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 28-02-2002

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 5, 9
Bihar Finance Act, 1981 — Section 17

Citation : (2002) 02 JH CK 0102

Hon'ble Judges : Vinod Kumar Gupta, C.J;Vishnudeo Narayan, J

Bench : Division Bench

Advocate : S.K. Ughal, T. Kabiraj and P. Kumar, for the Appellant; A.B. Mahata and Shailesh, J.C. to G.P. -II, for the Respondent

Final Decision : Dismissed

Judgement

The Court

1. In this petition filed under Article 226 of the Constitution, the petitioner, inter alia has sought the relief of issuance of an appropriate writ for quashing the Certificate proceedings initiated in terms of the Bihar & Orissa Public Demands Recovery Act. 1914 and accordingly for quashing and setting aside the order dated 18.1.2002, passed by the Certificate Officer issuing Distress Warrant against the petitioner. The petitioner claims that he had filed an objection petition in terms of Section 9 of the aforesaid 1914 Act and that it was incumbent and obligatory upon the Certificate Officer to have first disposed of the aforesaid objection petition and only then and thereafter to proceed to recover the amount in question by issuance of Distress warrant and by taking recourse to other provisions of the said Act. For the reasons that we state hereinafter. We find that this petition is not at all maintainable.

2. The Certificate proceedings in question were initiated in terms of Section 5 of the 1914 Act based on an Assessment Order passed by the Assessing Officer in terms of the Bihar Finance Act. 1981. The Assessing Officer, who passed this

Assessment Order on 25.6.1998 was the Commercial Taxes Officer Hazaribagh. The order was passed in terms of Section 17 of the Bihar Finance Act. 1961. It related to Assessment and recovery of Sales Tax dues of the petitioner. Since apparently the petitioner did not pay I he amount as assessed and demanded by the aforesaid Assessment Order and despite the demand raised thereupon, the Certificate proceedings in terms of Section 5 of the 1914 Act were initiated.

3. Two important and interesting points arise for consideration in this case: firstly, that the petitioner did not file any appeal against the Assessment Order in question despite a clear statutory provision prescribed therefore, Section 45 of the Bihar Finance Act. 1981, clearly lays down that every person, who objects to an order of assessment or penalty or both has a right to file appeal to the prescribed authority. Admittedly the petitioner did not choose to file any appeal against the said Assessment Order. The petitioner did not also prefer any revision petition against the Assessment Order despite the provision contained in that behalf in Section 46 of the Bihar Finance Act. 1981. The petitioner did not take any other step for having the Assessment Order set aside modified or varied. Why he did not file the statutory appeal or a revision petition and why he did not take any other step against the order with respect to the Assessment Order has not at all been explained by the petitioner in the writ petition.

4. The second point relates to interpretation of Sections 9 and 10 of the 1914 Act. The learned Counsel for the petitioner submits that he had filed an objection petition before the Certificate Officer as stipulated u/s 9 of the 1914 Act and that it was incumbent and obligatory upon the Certificate Officer to have first disposed of the objection petition and only thereafter to issue the Distress Warrant. Even though Section 9 of the 1914 Act does provide for a certificate debtor to present to the Certificate Officer a petition denying his liability to pay and even though Section 10 does provide for the Certificate Officer to hear the petitioner and determine whether the certificate debtor is liable to pay or not to pay the amount in question in the facts of the present case what we find is that neither Section 9 nor Section 10 of the 1914 Act were attracted inasmuch as a bare perusal of the copy of the application filed u/s 9 of the 1914 Act clearly informs us that all the grounds taken by the petitioner in that application denying his liability to pay (as raised in Clause (a) to (e) of Para ''2'' of the application) revolved around the contents of the Assessment Order. The petitioner was calling upon the Certificate Officer in the aforesaid application to reconsider the findings of fact and law as were returned by the Assessing Officer in the Assessment Order in question. In other words, in the aforesaid Section 9 application the petitioner was calling upon the Certificate Officer to sit in appeal over the Assessment Order, or using another expression to go beyond the assessment order and to consider and decide whether what the Assessing Officer had found against the petitioner was correct or not. Such is not and cannot be the scope of an application to be presented u/s 9 of the 1914 Act. What Section 9 provides for and stipulates is that within the confines and parameters of the Assessment Order (and not at all beyond the Assessment Order) if the petitioner contends

before the Certificate Officer that he is not liable to pay or is partly liable to pay the Certificate Officer may hear him and dispose of the objection petition. For ready reference we reproduce hereinbelow Section 9 and 10 of the 1914 Act. They read thus :

"9. Filing of petition denying liability.--(1) The certificate debtor may within thirty days from the service of the notice required by Section 7 or where the notice has not been duly served then within thirty days from the execution of any process for enforcing the certificate present to the Certificate Officer in whose office the certificate is filed or to the Certificate Officer who is executing the certificate a petition, in the prescribed form signed and verified in the prescribed manner, denying his liability in whole or in part.

(2) if any such petition is presented to a Certificate Officer other than the Certificate Officer in whose office the original certificate is filed it shall be sent to the latter officer for disposal.

10. Hearing and determining of such petition.--The Certificate Officer in whose office the original certificate is filed shall hear the petition take evidence (if necessary) and determine whether the certificate- debtor is liable for the whole or any part of the amount for which the certificate was signed: and may set aside, modify or vary the certificate accordingly.:

Provided that if the Certificate Officer is not the Collector and considers that the petition involves a bona fide claim of right to property he shall refer the petition to the Collector for orders, and the Collector, if he is satisfied that a bona fide claim of right to property is involved, shall make an order cancelling the certificate."

A combined reading of these two sections clearly suggests, to us that when the Certificate Proceedings relate to and arise out of a public debt and have been initiated by or at the instance of a public officer in terms of Section 5 (based on an Assessment Order as in the present case passed by the statutory body such as an Assessing Officer under the Bihar Finance Act. 1981) the Certificate Officer has no jurisdiction whatsoever to go beyond the Assessment Order. If the Certificate Officer exceeds his jurisdiction in going beyond the Assessment Order, that would amount to reviewing or recasting the Assessment Order which is in the exclusive domain of the appellate or the revisional authority as is provided in the Bihar Finance Act. 1981. This jurisdiction of reviewing or recasting the Assessment Order or sitting in appeal over the same does not at all belong to the Certificate Officer. This jurisdiction in terms of Section 45 or 46 of 1981 Act belongs to either the Appellate or the Revisional authority. Whether this jurisdiction does belong to the Certificate Officer? He has no Jurisdiction whatsoever to sit in appeal over the judgment of the Assessing Officer. That jurisdiction belongs to the forum created by Section 45 or Section 46 of the 1981 Act. Yes, there may be cases where without going beyond the Assessment order without exercising any jurisdiction which may directly or indirectly be in the nature of appellate or revisional jurisdiction, the Certificate Officer may still be called upon to consider an objection petition filed u/s 9 of 1914 Act by a Certificate-debtor. For instance the Certificate-debtor may claim that he has paid the amount in question or has partly paid the amount but has not been granted appropriate or suitable adjustment. Such an objection petition would always be entitled to consideration by the Certificate Officer. Any objection petition which does not call upon the Certificate Officer to go behind the Assessment Order or to do such an Act as would amount to reviewing reconsidering or recasting the Assessment Order may be considered by the Certificate Officer but certainly not any objection petition through which all that the Certificate- debtor asks the Certificate Officer to do is to review the Assessment Order itself. At the risk of repetition we may say that a bare perusal of the copy of Section 9 application suggests to us that precisely the petitioner wanted the Certificate Officer to review and reconsider the Assessment Order itself. That surely he could not do.

5. For the aforementioned reasons, we find no merit in this writ application and the same is dismissed with costs assessed at Rs. 5,000/- (Rupees five thousand), which shall be deposited by the petitioner in the Legal Aid Fund.

