

(1994) 01 PAT CK 0015
In the Patna High Court
Case No : C.W.J.C. No. 4025 of 1993 (R)

Binod Kumar Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-01-1994

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 60, 62, 7

Citation : (1994) 42 BLJR 658 : (1994) 1 PLJR 508

Hon'ble Judges : S.N. Jha, J;N. Roy, J

Bench : Division Bench

Judgement

S.N. Jha and N. Roy, JJ.—While hearing this writ petition on 5-1-1994, we were struck, nay shocked, to see the manner in which the Sub-divisional Officer, Dhanbad, Sri Krishna Choudhary, (hereinafter referred to as "the officer") exercising the powers of the Certificate Officer under the Bihar Public Demands Recovery Act, 1914 ("the Act" in short) had passed orders and taken action against the petitioner No. 2 in a proceeding under the said Act. Prima facie being of the opinion that mere setting aside of the impugned order would not suffice the ends of justice and compensate the petitioner for having been put in prison in a most arbitrary manner in gross violation of the provisions of the said Act and all norms of judicial proceedings, we directed the Officer to personally appear in Court and file show cause making it clear that on the next date the Court shall consider the question of awarding of personal compensation against him. The Officer accordingly has appeared and filed a counter-affidavit. As the order dated 11-1-1994 would recall the said counter-affidavit has been treated as show cause. The parties were heard and the matter has been posted for orders today. In order to make home the point it would be appropriate to very briefly refer to the provisions of the Act.

2. As the very preamble would suggest, the underlying object of the Act is to enact law for recovery of "public demand" within the meaning of the Act. Part II of the Act contains provisions, inter alia, for filing of requisition (where the public

demand is payable to person other the Collector), signing of certificates, issue of notice and hearing of objections. Part III of the Act contains provisions laying down a detailed mechanism for recovery of the certificate dues. They are analogous to the provisions of Order XXI, of the CPC and virtually a complete Code by themselves. Having regard to the various provisions contained therein it is obvious that the certificate dues are to recovered by process of attachment and sale of the property of. the certificate-debtor. Before, however, the provisions of Part III can be applied the certificate-debtor has a statutory right of preferring objections u/s 9 and against an adverse order passed thereon to prefer appeal and revision under Sections 60 and 62 of the Act. In fact, as would appear from the provisions of Section 43, the certificate-debtor is further entitled to institute a suit at any time within six months from the date of service of notice u/s 7 or within six months from the date of determination of his liability u/s 9 or, where he has preferred an appeal, within six months from the date of appellate decision.

3. In the instant case it would appear that on the requisition of the Executive officer of the Dhanbad Municipality dated 17-2-1993, Certificate Case No. 23/MT of 1992-93 was registered. The Certificate Officer signed the certificate and directed issue of notice in terms of Section 7 of the Act on 5-3-1993. The certificate-debtors, i.e. the petitioners filed objection denying liability u/s 9 on 30-4-1993. The order-sheet of the case discloses that the matter was not taken up on number of dates thereafter because of non-receipt of parawise comments from the Executive Officer of the municipality i.e. the requisitioning authority. On 15-9-1993 the proceedings were transferred to the file of Sub-divisional Officer, Dhanbad, who, it appears, is also vested with the power of Certificate Officer under the Act for disposal. The case record appears to have been received by the Officer on 9-12-1993. On the same day he recorded a brief "note" in the order-sheet (in about six sentences) without any hearing saying that he had perused the parawise comments according to which the objection was without merit. He posted the case for orders on 13-12-1993. On that date he again passed a cryptic order (running in about three sentences) saying that a huge amount was due from the certificate-debtors for long and therefore "in the light of the parawise comments; the objection was rejected". We are prepared to concede to the authority a "jurisdiction" to pass wrong order on the basis of bald omnibus findings. Sometimes, it is true, even reasoned orders are set aside because the superior Court/Tribunal does not agree with the reasons. However, passing wrong order is one thing, manner of passing it another thing. In this case, painfully enough without any hearing, after rejecting the objection, on the same day and, in fact, in the same breath, he also directed issue of process for attachment and arrest the petitioner pursuant to which petitioner No. 2 was actually taken in custody on the same very day. He was not released until Bum of Rs. 74,000 under cheque was deposited. According to the petitioners they had to take loan for the purpose. A further sum of Rs. 10,000 was realised from them under threat and coercion on 28-12-1993.

4. In the counter-affidavit filed by the Officer, instead of expressing regret and

admitting the fault, attempt has been made to justify his action saying that the petitioner owed a sum of Rs. 1,57,869,80 p. out of which only Rs. 84,000 has been paid and the petitioners have to pay the rest.

5. We are not able to appreciate as to how after rejecting the objection, even if it be assumed that the objections could be rejected without going into details on the basis of bald omnibus finding, the officer could have issued process for attachment of property and arrest of the petitioners on the same day forgetting that the certificate-debtor has statutory right of preferring appeal in terms of Section 60 of the Act for which law provides limitation of 15/30 days.

6. In *Mahanth Daya Ram Das v. State of Bihar* 1975 BBCJ 667, this Court has held, while dealing with the provisions of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, that the Collector under the Act after disposing the objection to the draft statement u/s 19(3) of that Act, has to wait for expiry of the statutory period of 30 days prescribed for appeal before the final publication of the surplus land can be made. The officer has sought to justify his action on the plea that the petitioners were contemplating to sell the property. To us, the plea appears to be an after thought because it is not stated so in the order. Even if it were so, the attachment of the property in question would have served the purpose. We have briefly indicated the scheme of the Act. We have said that the object of the provisions of the Act is to recover the dues. Keeping the person in prison can hardly serve that object. Section 38 of the Act, no doubt, provides for arrest of the certificate-debtor and in appropriate cases where there are reasons to believe that the certificate-debtor is not possessed of means to pay the dues or that he may abscond beyond the jurisdiction of the Certificate Officer coercive action in regard to arrest of the person may undoubtedly be taken. If the Certificate Officer was of the opinion that the petitioners were contemplating to transfer the property it was open to him to direct attachment of the property. However, we are not able to comprehend as to how without taking recourse to the elaborate provisions contained in Part III of the Act in regard to attachment and sale he could have taken the petitioners in custody immediately after rejecting the objection. Nothing has been stated in the order which could even remotely justify the action.

7. The conduct of the officer discloses a said ignorance of law on the subject. He appears to have no idea about certificate proceeding and the provisions of the Act. The fate of the certificate-debtors or, for that matter, certificate holder will not be safe in his hands. We are, therefore, of the opinion that a general order should be passed restraining him from deciding any proceeding under the said Act. The Deputy Commissioner shall, accordingly, recall all certificate cases from his file and assign them to any other certificate officer within his jurisdiction.

8. We would have rather restrained him from discharging any judicial/quasi-judicial functions on account of his predilections to pass orders on whims verging on judicial anarchy but having regard to the fact that by virtue of his posting as Sub-divisional Officer/Magistrate, ex-officio he is empowered to discharge judicial/

quasi-judicial functions not only under the Code of Criminal Procedure but under various other statutes, we do not pass any such order. However, we are firmly of the view that the officer is not fit to hold any office by virtue of which he may have an occasion to discharge judicial/quasi-judicial functions. Accordingly, we direct the Chief Secretary, Bihar, to consider the question of transferring him from his present post Hand posting him at a place he may not have the occasion to discharge any judicial/quasi-judicial functions. The Chief Secretary shall consider the matter within a month from the date of receipt of a copy of this order and report compliance within two months.

9. So far as putting petitioner No 2 in prison in concerned, as indicated at the very outset, we are of the opinion that mere setting aside the order and directing the matter to be decided afresh will not repair the damage already done to the petitioner No. 2. Right, to liberty is considered to be the most sacred of all fundamental rights. The officer deprived the petitioner No. 2 of this valuable right by putting him in prison in a most arbitrary and whimsical manner. We are of the opinion that petitioner No. 2 should be compensated by him for having been put in prison. We, accordingly, direct the officers to pay by way of compensation a sum of Rs. 5000 (five thousand) to petitioner No.2 from his own pocket within a month from today with intimation to this Court, In the event of failure of the officer to pay the amount, petitioner No. 2 will be entitled to recover the money by executing this order as a decree in a competent civil court at Dhanbad with interest at the rate of 9%.

10. We would also direct in the facts of the case, that the officer will not be entitled to any allowance for his visit to Ranchi and stay in connection with the present case. He will bear the expenses himself. Let intimation to this effect be sent to the Treasury Officer, Dhanbad.

11. As regards the instant case, we have no manner of doubt, for the reasons already stated above, that the impugned order dated 13-12-1993 cannot be sustained for a moment. Accordingly, the same is set aside and the matter is remitted to the Deputy Commissioner, Dhanbad, who will either decide the objection himself or assign the case to an officer above the rank of the Sub-divisional Officer. If no such officer (above the rank of Sub-divisional Officer) is available at Dhanbad, the Commissioner of the Division will authorise an officer to exerce the powers of Certificate Officer in terms of the provisions of Section 3(3) of the Act. We hope and trust that the Collector (or the officer to whom the matter is assignend) will consider the matter in a judicious manner. While deciding the objection he will take into account the fact that the petitioners were made to deposit a sum of Rs. 84,000 under coercive circumstances and, therefore, depending upon the result of the objection, he would also consider the question of refund of the amount with interest as he may deem fit and proper.

12. This application is allowed with the observations and directions mentioned above.

13. However, in order to ensure compliance of the order both in regard to payment of compensation as also in regard to transfer/posting of the officer, we direct the case to be put up under the heading "For orders" after two months when the Bench will consider taking appropriate action against the person concerned, if necessary.

14. This order has been passed in presence of the officer concerned.

15. Let a copy of this order be sent to the Chief Secretary, Bihar, Deputy Commissioner, Dhanbad and the Treasury Officer, Dhanbad, for the needful.