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(2002) 05 PAT CK 0101

In the Patna High Court

Case No : C.W.J.C. No. 5234 of 2001

Lakshmi Fertilizer Agency APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 14-05-2002

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 72, 9
Contract Act, 1872 — Section 62

Citation : (2002) 3 PLJR 275

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Katriar, J.—Heard Mr. Navniti Prasad Singh for the Petitioner, learned GP IX for Respondent Nos. 1 to 4, and Ms. Nilu Agrawal for Respondent No. 5 (Buxar Agriculture Produce Market Committee). This writ petition has been preferred with the prayer to set aside the order dt. 30.3.2001 (Annexure 8), passed by the learned appellate authority under the Bihar and Orissa Public Demands Recovery Act, and to quash certificate case No. 1 of 1992-93, pending before the learned Certificate Officer, Buxar, started at the instance of Respondent No. 5 (Buxar Agricultural Produce Market Committee, Buxar).

2. Certificate Case No. 1 of 1992-93 has been registered against the Petitioner, which is currently pending before the learned Certificate Officer, Buxar, and the notice dated 2.2.93 was issued to the Petitioner in terms of Section 72 of the Act, photocopy of which is marked Annexure 3. The Petitioner submitted his objection u/s 9 of the Act (Annexure 4), which was upheld by learned Certificate Officer by order dated 22.3.93 (Annexure 5). It appears that Respondent No. 5 (Buxar Agricultural Produce Market Committee, Buxar) appealed before the Collector of the District, which was registered as Case No. 97 of 1996 (Market Committee v. M/s Lakshmi Fertilizers Agency), and has been allowed by order dated 30.3.2001 (Annexure 8), whereby the order of the certificate officer dated 31.5.96 has been

set aside, and has directed the Certificate Officer to realise the certificate dues from the Petitioner.

3. While assailing the validity of the impugned order, learned Counsel for the Petitioner submits that the dues in question is not ''government dues'' within the meaning of the Act, nor is there any agreement between the parties to have the same recovered under the Act. He next submits that the lease agreement between the parties has spent itself in so far as the Petitioner is concerned. Respondent No. 5 now seeks to alter the same much after the Petitioner has vacated the premises and the agreement has run out its course.

4. Ms. Nilu Agrawal, counsel for Respondent No. 5 has opposed the writ petition.

5. Having considered the submissions I am of the opinion that this writ petition is fit to be allowed. It appears from the pleadings of the parties that the Petitioner had occupied a business premises owned by Respondent No. 5 at Buxar for the period 12.12.89 to 15.4.91, which is evidenced by the lease agreement dated 15.12.89 (Annexure 2). It appears from a bare perusal of the same that tenancy was to commence on 15.12.89 on a yearly ground rent of Rs. 3000/- @ 1 rupee per sq. ft. It is manifest from the agreement that the rent was to be paid by the Petitioner per month proportionately as per the said rate which had admittedly been paid by it for the entire period of occupation. No attempt was made on the part of Respondent No. 5 during the currency of the agreement to bring about novation of contract in terms of Section 62 of the Contract Act. Respondent No. 5, therefore, is precluded from altering the terms and coot the agreement and enhance the rental retrospectively after the same has spent its force. Secondly, learned Counsel for the Petitioner is right in his submission that the differential of the amount as claimed by Respondent No. 5 is not a ''government due'' within the meaning of the Act, nor there is any agreement between the parties to resort to the provisions of the Act. Therefore, the differential of the amount towards rental as claimed by Respondent No. 5, cannot be realised in certificate proceedings.

6. In the result, this writ petition is allowed, and the impugned order dated 30.3.2001 (Annexure 8), is hereby set aside.

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