
(2006) 05 PAT CK 0011
In the Patna High Court
Case No : L.P.A. No. 987 of 2005

Mahendra Singh	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 09-05-2006

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 60
Constitution of India, 1950 — Article 226

Citation : (2006) 2 PLJR 596

Hon'ble Judges : J.N. Bhatt, C.J.; S.N. Hussain, J

Bench : Division Bench

Advocate : Devendra Pd. Sinha and Bajrangi Lal, for the Appellant; Lalit Kishore, AAG III, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard the learned Counsels appearing for the parties. We have also considered the facts and circumstances emerging from the record of the present case and the provisions of Bihar & Orissa Public Demands Recovery Act, 1914 ("PDR Act" for short) were also examined.
2. Challenge in this appeal by the appellant is against the order of the learned Single Judge, recorded on 2.7.7.2005 in CWJC No. 8795 of 2005, whereby, the writ petition under Article 226 of the Constitution of India filed by the original writ petitioner, appellant before us, came to be rejected on the ground that there lies an appeal against the impugned order of original respondent No. 2 Subdivisional Certificate Officer, Sasaram, Rohtas.
3. Section 60 of the PDR Act provides for an appeal against the order of the Certificate Officers who have passed such orders in the performance of their duties under the PDR Act. There is no dispute about the fact that the impugned order of respondent No. 2, Sub divisional Certificate Officer, dated 17.5.2005, would be final in appeal, as provided u/s 60 of the PDR Act. However, the learned counsel for the appellant has raised the sole contention before us that the

impugned order of respondent No. 2 is without jurisdiction and, therefore, there was no question of availing or pursuing the statutory provisions of appeal. It is in these context, it may be mentioned that the Subdivisional Certificate Officer, respondent No. 2, was competent to decide the issue as to whether he has jurisdiction or not. The impugned order of respondent No. 2, dated 17.5.2005, is not straightway challenged by filing the writ petition. What is challenged is the rejection of the claim. Assuming even that the issue of jurisdiction is not appropriately dealt with by the respondent No. 2, Subdivisional Certificate Officer, then also either the party has to move by way of review of the said order before the same authority, or to prefer an appeal u/s 60 of the PDR Act.

4. The appellant did participate in the proceedings, of course, raising the same point but waited till the decision of the respondent No. 2 authority, and, thereafter, the petitioner after coming to learn that he has lost the battle thought it expedient, to avail the extraordinary plenary, discretionary, and equitable writ jurisdiction of this Court under Article 226 of the Constitution of India challenging the validity and legality of the order of the Certificate Officer whereby a demand for a sum of Rs. 1,41,234/- is made by way of electricity consumption.

5. Instead of preferring an appeal, a writ petition is filed in this Court. The question of jurisdiction would be decided by the appellate authority irrespective of the view taken by the first authority, namely, the Subdivisional Certificate Officer, as it is explicitly borne out from the provisions of Section 60 of the PDR Act.

6. Let it be highlighted that the entire mechanism of the PDR Act is devised and designed to consolidate the law relating to recovery of Public Demands in Bihar and Orissa. It is a special statute that creates special jurisdiction in the Certificate Officer. It is apparent from the preamble of the said Act that the underlying object of the Act is to enact a law for recovery of "public demand" as defined under the PDR Act. It is, therefore, very clear that this PDR Act provides special procedure for recovery of certain types of dues. There is special procedure, hierarchy and authority under the Act for achieving the purpose. In case, if the party is not happy or is aggrieved by the order of the first authority, it is always open to him to pursue the remedy of appeal as per the provisions of Section 60 of the PDR Act.

7. Ordinarily, when an efficacious, alternative, statutory mechanism is provided, the parties are normally expected to exhaust that remedy. Merely because questioning the impugned order by filing an appeal would result into payment of 40% of the amount of the demand by way of deposit, a person cannot be heard to say that the Court has to hear merely because the question of jurisdiction is raised.

8. Let it be mentioned that so far as exercise of jurisdiction is concerned, there are three facets:

(i) Want of jurisdiction;

- (ii) Excessive exercise of jurisdiction; and
- (iii) non-exercise of jurisdiction vested in the authority.

9. It is very clear from the facts of the present case that the latter two aspects are not attracted. The only question which is propounded before us in this appeal is that the impugned order of the first authority was without jurisdiction, in other words, it suffers for want of jurisdiction and, therefore, it was not necessary to exhaust statutory remedy or measure provided under the PDR Act. We do not agree with this submission.

10. The learned Single Judge in these context, has rightly taken the view that the original writ petitioner, before us, ought to have resorted to the provisions of Section 60 of the PDR Act as the same question, in appeal, is open to be considered and examined afresh.

11. We are, therefore, of the clear opinion that there is no substance and leg to stand so far as this appeal is concerned. Accordingly, the appeal shall stand dismissed. No costs.