
(2006) 12 PAT CK 0090
In the Patna High Court
Case No : CWJC No. 8367 of 2006

M/s Devi Construction

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-12-2006

Acts Referred:

Citation : (2008) 3 PLJR 335

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Ashutosh Ranjan Pandey and Rakesh Narayan Singh, for the Appellant; Lalit Kishore (in 8367), M/s Ray Shivaji Nath and Amrendra Kr. Pandey (in 7297), for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard. By these writ applications the petitioners have challenged initiation of certificate proceedings on the ground that the dues sought to be recovered are not public demand and as such the proceedings are wholly without jurisdiction.

2. State has appeared and filed counter affidavit. Learned Additional Advocate General has raised a preliminary objection as to the maintainability of the writ applications on the ground of availability of alternative remedy under the provision of Public Demands Recovery Act itself.

3. To my mind the objection has been raised only to reject for the simple reason that the petitioners have challenged the jurisdiction of the authority to initiate the proceeding and that being so this court is competent to examine the matter and the writs are maintainable. Even otherwise the question of alternative remedy does not exclude the jurisdiction of this court. The restriction is self-imposed restriction and a discretion is vested in this court to be exercised in appropriate case. To my mind this is an appropriate case in which this court is required to interfere.

4. The petitioners submits that the dues sought to be recovered by the Forest Department is not a public demand. Public demand is defined in Schedule I of the Act. The counter affidavit has been filed and my attention has been drawn to the averments which clearly discloses that the petitioners had mining lease. They are alleged to have encroached beyond the tease area. They had worked in forest area and done illegal minings. In respect thereof a confiscation proceeding was initiated as well as a proceeding for cancellation of mining lease. Both those proceedings were statutory in nature. We are not concerned with those proceedings because at no point of time under those two proceedings any demand was raised.

5. In the counter affidavit it is clearly stated that the District Forest Officer recommended to the Collector that for the petitioners having done illegal mining a suit may be ordered to be filed for recovery of lost cost. This to my mind was the only option for the State in absence of any statutory power conferred on it to determine the due. It appears that the Collector without appreciating legal consequence ordered for a survey of the area allegedly encroached and used for mining purposes by the petitioners and then assessed the value of illegal minings on his own and thus initiated certificate proceeding on the ground that this became the money due and payable to the Forest Department under the Forest Act and as such was recoverable by the certificate proceeding.

6. Having heard counsel for the parties, it is clear that what has been assessed is a non-statutory assessment without reference to any statutory authority. Such an assessment has no legal sanctity. It is an unenforceable much less therefore through a certificate proceeding. The proper remedy available was initiating a Suit and seeking damage therein. It is another matter if a proper proceeding was drawn up under the Mining Regulation Act and Rules framed therein and in those statutory proceedings damage or mining dues were quantified and then recover it. That not having been done it cannot be said that the dues sought to be recoverable are public demand and it is not recoverable under the said Act. In that view of the matter certificate proceedings are thus wholly without jurisdiction and are liable to be quashed and it is accordingly quashed. Both the writ applications are allowed.