
(1991) 01 OHC CK 0005

In the Orissa High Court

Case No : O.J.C. No. 3257 of 1989 and Miscellaneous Case No. 4372 of 1989

Paramjit Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-01-1991

Acts Referred:

Orissa Public Demands Recovery Act, 1962 — Section 4

Citation : (1991) 1 OLR 525

Hon'ble Judges : R.C. Patnaik, J;K.C.J. Roy, J

Bench : Division Bench

Judgement

1. Heard counsel for the parties.

2. In this writ application, a certificate in certificate case No. 9/ Misc. Case of 1978 pending before the Special Certificate Officer, Bhadrak, is assailed on the ground thru there was no valid requisition as required by the Orissa Public Demands Recovery Act, 1952 for the filing, of the certificate by the Certificate Officer.

3. Late Survamarni Mohanty had taken a loan of Rs 4,800/- in the year 1964-65 under the L I.G. Housing Scheme. Said Suryaman Mohanty, a freedom fighter, suddenly died on heart ailment and a proceeding was started for realisation of the amount with interest. The petitioner and the other legal representatives of Suryamani were called upon to pay a sum of Rs. 10,257/- as per the notice (Arrnextrure-1) and a certificate was filed in the Court of the Special Certificate Officer, Bhadrak (O. P. No. 3). The petitioner's eldest son, alleged that a sum of Rs. 8,700/- had already been paid towards the dues, and the certificate for Rs. 10,257/- for the principal amount of Rs. 4,800/-, when a sum of Rs. 8,700/- had already been paid, was arbitrary. We had called for the records of the certificate case and after going, through the same, find that a letter was sent by the Additional District Magistrate, Balasore to the Special Certificate Officer, Bhadrak, for realisation of Rs. 10,257/-, The letter is dated 17th March, 1978 and is at page 1 of the file. The letter does not confirm to the requirement of the

requisition contemplated in Section 4 of the Act. Sub-section (2) of Section 4 provides :

"(2) Every such requisition shall be signed and" verified in the prescribed manner, and except in such cases as- may be prescribed shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 7 of 1970, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due."

Rule 1 in Sch. II reads as under :

"1. Signature and verification of requisitions for certificates :

(1) Every requisition made u/s 4 shall be signed and verified at the foot by the person making it, or by some other person on his behalf who is proved to the satisfaction of the Certificate Officer to be acquainted with the facts of the case.

(2) The verification shall state that the person signing the requisition has been satisfied by enquiry that the amount stated in the requisition is actually due.

(3) The verification shall be signed by the person making it, and shall state that date on which it is signed."

Form 1 is the prescribed form, form No. 2 requires the Requisitioning Officer to state a satisfaction that upon enquiry, he was satisfied that the amount was due from the basis of the filing of the certificate by the Certificate Officer where the signature and the verification by the requisitioning authority is a mandatory requirement. Hence deviation therefrom invalidates the certificate. We, therefore, quash the certificate. It is open to the authority to initiate a fresh proceeding in accordance with law.

4. The petitioner, however, through his counsel agrees that he is willing to clear up the dues, if payment by suitable installments is directed, and he is also agreeable that he shall pay the entire dues with interest as stipulated in the loan agreement. We, therefore direct the Collector, Balasore or the A. D. M., Balasore, to give an opportunity of hearing to the petitioner and determine the amount due from him after taking that into account and after deducting the amount paid By the petitioner, who shall clear up the dues in monthly instalments at the rate of Rs. 200/-. The monthly instalment of Rs. 200/- shall be deducted from his salary and shall be adjusted towards the dues.

5. With the directions aforesaid, the writ application is disposed of.