

(1971) 07 PAT CK 0020

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 136 of 1968

Raghuni Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-07-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1972 Patna 212

Hon'ble Judges : U.N. Sinha, C.J;K.B.N. Singh, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, Narbadeshwar Pd. Singh and Umesh Pd. Singh, for the Appellant; Sushil Kumar Jha, Govt. Pleader II, for the Respondent

Final Decision : Dismissed

Judgement

1. This Writ application has been filed by the petitioners under Article 226 of the Constitution of India praying that the notice issued to them (Annexure A) be quashed and cancelled by a writ of mandamus. Annexure A is a demand made by the Block Development Officer, Bihta, dated the 17th February 1968, asking the petitioners, proprietors, Gultera Bazar, Bihta, to send 25 per cent of certain foodgrains to the Vyapar Mandal within two days and to submit a bill for payment of the price of the same. This order had been passed on the basis that certain quantities of paddy and rice were found in the petitioners' bazar. The relevant facts mentioned in the application are as follows. It is said that in Gultera Bazar buyers and sellers come and deal in grains and the petitioners realise tolls from the vendors of grains at a certain rate. This bazar is held, specially, on Tuesday and Friday. The petitioners have provided some structures in the bazar, where unsold foodgrains are kept by the sellers until the next market-day, and for this storage the petitioners charge at the rate of 6 paise per bag of grain stored. On 23rd of November 1967 a notification was published by the State of Bihar, known as the Bihar Essential Foodgrains Procurement Order, 1967, purporting to be one u/s 3 of the Essential Commodities Act, 1955, and under paragraph 17 of that

Order, every wholesale dealer is obliged to sell to the Government at his business premises certain quantities of paddy and rice mentioned in that paragraph. It is stated that the Supply Inspector, Bihta (respondent No. 2), had acted under paragraph 19 of the said Procurement Order and had demanded to seize certain papers from the petitioners and, on inspection of such record, this respondent had made an endorsement requiring the petitioners to sell certain specified quantities of paddy and rice, in accordance with the requirements of paragraph 17 of the Procurement Order. It is said that in consequence of this action taken by respondent No. 2, the Block Development Officer, Bihta (respondent No. 31, had passed the order incorporated in Annexure A, which was a demand notice. The petitioners had sent an objection in writing to the said Block Development Officer, a copy of which has been given as Annexure B, requesting him to withdraw the demand notice. Not having heard anything on this petition of objection, this writ application has been filed on the allegation that the demand was illegal and unlawful. A counter-affidavit has been filed by the respondents, sworn by Shri Prem Narain Mishra, a Supply Inspector posted at Bihta. It is mentioned in the counter-affidavit that the writ petitioners are wholesale foodgrain licensees under Bihar Foodgrains Dealers' Licensing Order, 1967, and they carry on business in Gultera Bazar and that it was not a correct state of affairs that the petitioners merely collect tolls on grains sold in the aforesaid place. According to the counter-affidavit, further, the petitioners issue receipts for levy collected, indicating that they realise levy of grains for all transactions. The petitioners have been filing regular returns to the Government, showing the stock of foodgrains in their godown, as they have been doing business under the Bihar Foodgrains Dealers' Licensing Order. Certain extracts from the returns have been given in the counter-affidavit. It is stated that the petitioners had even filed a petition in February 1968 before the Supply Officer, Dinapur, praying for time to deliver the levied grain. It may be mentioned at this stage, that, after a rejoinder to the counter-affidavit had been filed by the petitioners, a reply to it has been filed on behalf of the respondents and Annexure 6 has been appended thereto, showing that one Ramii Singh, acting for petitioner No. 2, had filed a petition dated 23rd February 1968 before the Supply Officer, Dinapur, stating that further deposits will be made in a day or two. Referring to the original counter-affidavit, it has been stated therein that the writ petitioners acted as commission agents for every sale transaction of grain in the bazar, taking some additional charges for facility or storage in case transactions are not completed on the day of assemblage. Thus, the levy made under Annexure A of the Writ application is supported.

2. The main contention raised by the learned counsel for the petitioners is to the effect, that, the petitioners do not do any business in Gultera Bazar, but, they only realise tolls from the sellers at the rate of 40 paise per bae of 2 maunds and 20 seers of grains sold and they charge 6 paise per bag stored in certain structures provided by them, and, therefore, the petitioners are not liable to give any grain as levy. It is contended that before any demand can be made in the

nature of the demand made in Annexure A it must be proved that the grains ordered to be delivered as levy come within the purview of the Essential Foodgrains Procurement Order, 1967. According to the learned counsel, the petitioners may be wholesale dealers, having been licensed under the Bihar Foodgrains Dealers" Licensing Order 1967, nevertheless no levy of grains can be made from them, as ordered in Annexure until it is verified that such grains were not being held by them as bailee. Shri Sushil Kumar Jha appearing for the contesting respondents, has "argued, that, the petitioners were wholesale dealers within the meaning of the Foodgrains Dealers" Licensing Order, the definition of which is identical with the definition of "wholesale dealer" under the Foodgrains Procurement Order." and therefore, the demand made in Annexure A was a legitimate demand and the petitioners were giving levy in the past, in the usual course of business. It is contended on behalf of the respondents that in view of Annexure 6, the petitioners" point raised in the present writ application that they were merely bailees of foodgrains which come to Gultera Bazar cannot be accepted. Having heard learned counsel for the parties on disputed questions of fact, we do not think that any relief can be given to the petitioners by way of a writ, on the contentions raised on their behalf. There is no denying that the petitioners were licensed dealers under the Food-grains Dealers" Licensing Order, 1967, at the relevant time and there are no materials on record for a conclusion that they were holding foodgrains mentioned in Annexure A merely as bailees, so that no order of levy could be made. Although the petitioners had filed an objection before the Block Development Officer, as stated earlier, raising the point that they were bailees of the goods stored in Gultera Bazar, no materials have been filed in this Court to show that the petitioners were holding any quantity of the grains mentioned in Annexure A, only as bailees, whereas the grains belonged to others. Whether Annexure 6 had been filed on behalf of the petitioners by Ramji Singh or not is beside the point. Having raised the question in this court that the petitioners were bailees and not dealers of the foodgrains mentioned in Annexure A, it was incumbent upon the petitioners to bring before the Court materials to indicate that the point raised may be valid point, if investigated. Mere assertion of fact that the petitioners were holding certain quantities of grains as bailees cannot entitle the petitioners to a writ or direction under Article 226 of the Constitution, without anything more, for an investigation of facts.

3. On the definition of "wholesale dealer" mentioned in the Foodgrains Dealers" Licensing Order, 1967, and the Essential Foodgrains Procurement Order, 1967, learned counsel for the petitioners has referred to the *Lion Mutual Marine Insurance Association Ltd. v. Tucker* (1883) 12 QBD 176 and the cases of the Supreme Court of India in *University of Delhi and Another Vs. Ram Nath*, and the *The Management of Safdarjung Hospital, New Delhi Vs. Kuldip Singh Sethi*, . In our opinion, this point is too academic to be dealt with any further. The main contention raised on behalf of the petitioners that they were merely bailees with respect to the foodgrains mentioned in Annexure A finds no support from any

material on record presented to this Court up to now. Therefore, in our opinion, the petitioners cannot obtain an order from this Court for quashing Annexure A and for a writ of mandamus ordering the respondents not to proceed with the demand made by that annexure. The writ application, therefore, fails and it is dismissed, but without costs.