
(1999) 07 PAT CK 0092
In the Patna High Court
Case No : C.W.J.C. No. 7789 of 1995

Shanti Devi

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-07-1999

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 3(6)

Citation : (2000) 2 PLJR 206

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Rajeeva Sharma and Sunil Kumar Pathak, for the Appellant;
Bhrigunath Singh, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—This writ petition arises from a proceeding under the Public Demands Recovery Act and the single Petitioner before this Court prays for quashing the proceedings of Certificate Case No. 1/95-96 pending before the Sub Divisional Officer, Dumka.

2. The aforesaid case was instituted against her for recovery of a sum of Rs. 17,000/- being the approximate current price of 170 quintals of paddy given to her husband in the year 1982 under a "Jimmanama".

3. It appears that in course of search of the house of one Jitan Sah of village Dhowana under Masliya P.S. in the district of Dumka, 200 quintals of paddy was seized by the authorities. The seizure gave rise to a criminal case being Masliya P.S. Case No. 8/82 as well as a confiscation proceeding under the provisions of the Essential Commodities Act. Out of the seized paddy, 170 quintals was given for safe custody to the Petitioner's husband, who was at that time the Mukhiya of the village under a Jimmanama dated 10.2.1982 (Annexure-C to the counter affidavit) written and executed by him. In the Jimmanama he had acknowledged having received 170 quintals of paddy seized from the house of the aforesaid

Jitan Sah. He promised to keep the paddy under his safe custody and made himself accountable in case of any misappropriation. He further undertook to produce the paddy under his safe custody as and when required by the authorities.

4. It appears that the criminal prosecution of Jitan Sah ended in failure and the orders of confiscation passed against him were also quashed by this Court by order, dated 7.1.1993 passed in Cr.W.J.C. No. 71/85. After the quashing of the orders of confiscation it became the liability of the Respondent authorities to give back the paddy seized from his house to Jitan Sah or to pay him an equal amount in cash. By that time, however, there was no trace of the paddy and in the meantime the Petitioner's husband had also died on 24.11.1986. In that situation the Respondent authorities wrote to the Petitioner asking her to make payment of Rs. 17,000/-, the approximate price of 170 quintals of paddy assessed in the year 1993. On her failure to make payment, a requisition was made by the Sub divisional Officer and a certificate was obtained on the basis of which the certificate case was instituted against the Petitioner.

5. Mr. Rajiv Sharma, learned Counsel for the Petitioner submitted that the widowed wife was not the sole heir of her deceased husband and it was therefore erroneous on the part of the Respondent authorities to fasten his entire liability upon the Petitioner. He further submitted that in any event the amount due was not public demand" within the meaning of Section 3(6) read with schedule I of the Act.

6. I find substance in the submission made by Mr. Sharma. It is well established that only such Government dues can be recovered under the provisions of the Public Demands Recovery Act, 1914 which may be in the nature of public demand within the meaning of the Act. Now, from a perusal of Schedule-I it appears that the Government dues against the Petitioner's husband would come nearest to the item indicated in serial No. 9 of Schedule I of the Act. Serial 9 of Schedule I is as follows:

Any money payable to a servant of the Government or any local authority, in respect of which the person liable to pay the same has agreed by a written instrument that it shall be recoverable as a public demand.

7. From the Jimmanama, a photostat copy of which is on the record as Annexure-C to the counter affidavit, it is evident that there was no stipulation that the dues would be recoverable as a public demand under the provisions of the Act.

8. That being the position, though the dues against the Petitioner's husband might be Government dues it could not qualify as public demand being recoverable by instituting a certificate case under the Act. It must, therefore, be held that the proceedings of Certificate Case No. 1/95-96 are without jurisdiction and unauthorised. The proceedings of that case are accordingly quashed and the Respondents are restrained from proceeding against the Petitioner in that case.

9. In the result, this writ petition is allowed but with no order as to costs.