(1993) 09 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3330 of 1992 (R)

Sheela Sinha APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 11, 14, 15, 17, 48(1)
Bihar Industrial Area Development Authority Act, 1974 — Section 3, 8
Constitution of India, 1950 — Article 12
Forest Act, 1927 — Section 82, 83

Citation : (1994) 2 PLJR 617

Hon'ble Judges : S.B. Sinha, J;Narayan Roy, J

Bench : Division Bench

Advocate : Anil Kumar Sinha, for the Appellant; D.N. Sinha, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—The Petitioner in this writ application has questioned the order dated 26-10-92 passed by Respondent No. 2 as contained in Annexure 7 to the writ application whereby and whereunder the Petitioner''s shop has been directed to be sealed in a proceeding under the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter to be referred as ''the said Act'' for the sake of brevity) being certificate case No. 2/92-93. The aforementioned certificate proceeding was initiated at the instance of the Managing Director of Industrial Area Development Authority for the alleged realisation of a sum of Rs. 52,313 by way of arrears of rent for the period from 3.4.76 to 23.4.84 in respect of a shop which was allotted in favour of the Petitioner''s husband. Admittedly, the shop bearing shop No. 15 of Ranchi Industrial Area Development Authority was allotted to the Petitioner''s husband and the possession thereof was given to him in April, 1976 on a monthly rental of Rs. 200/- per month. The original allottee died on 16.11.77. The said shop was, however, later on allotted to the Petitioner by a letter dated 24.5.84 with retrospective effect from 14.11.79. The Petitioner, by her letter dated 23.6.87 allegedly objected to allotment of shop with retrospective effect. She allegedly also disputed the quantum of arrears of rent.

2. However, according to the Petitioner, without determining the aforementioned dispute a certificate proceeding was initiated for realisation of the aforementioned amount. The Petitioner, upon receipt of a notice in terms of Section 9 of the Act, filed her show cause, inter alia, raising the following questions:

(a) that the certificate is ab initio, illegal, void and without jurisdiction.

(b) that the alleged demand is not a public demand within the meaning of the Act and the same is not recoverable by way of certificate proceeding.

(c) that the copy of the requisition has not been served to the certificate debtor and as such the entire certificate proceeding is vitiated.

(d) that the requisition has not been properly signed and the same has not been verified in accordance with the provisions contained in the Act and the rules so framed thereunder and, as such, also the entire certificate proceeding is vitiated.

(e) that the certificate holder has not paid the requisition fees on the certificate and, as such also the initiation of the certificate proceeding and issue of notice u/s 7 of the Act are illegal, void and without jurisdiction.

3. However, according to the Petitioner, Respondent No. 2 did not determine the said objection and by reason of the impugned order dated 26.10.92 took possession of the shop in question. It was also contended that no court fee had been paid by Respondent No. 3 and thus the entire certificate proceeding is vitiated in law.

4. In this case a counter affidavit has been filed on behalf of Respondent No. 3 contending inter alia, that the impugned order is an appelable one. It has further been stated that Respondent No. 3 is a State and thus no court fee was payable. According to the Respondents, Bihar Industrial Area Development Authority had been created in terms of Section 3 of the Bihar Industrial Area Development Authority Act 1974, Section 11 whereof postulates that rent due to the authority would be recoverable as arrears of land revenue under the provisions of Bihar and Orissa Public Demands Recovery Act.

5. Mr. Anil Kumar Sinha, learned Counsel appearing on behalf of the Petitioner has raised only two contentions in support of this application. The learned Counsel submitted that as no court fee was paid by Respondent No. 3, the entire certificate proceeding was illegal. It was next contended that no certificate proceeding could have been initiated as against the Petitioner for realisation of the arrears of rent for the period during which the Petitioner''s husband was in possession. Learned Counsel, in support of his contentions, has relied upon a decision of this Court in Kanhaiyalal Dabriwala v. State of Bihar and Ors. 1982 BBCJ 4 : 1982 PLJR 257.

6. Mr. D.N. Sinha, learned Counsel appearing on behalf of Respondent No. 3 has,

on the other hand, submitted that the Authority is a statutory body created by the Government and its Board of Directors hold office during pleasure of the Government. It has further been submitted that the Authority is controlled by the Government and its accounts are audited by the Accountant General. Learned Counsel further submitted that in terms of Section 8 of the 1974 Act, the accounts of the authority are audited by the Accountant General and the report of the Accountant General is to be submitted to the Govt. Our attention was further drawn to the fact that u/s 14 of the Act, rules are to be framed by the Government. In terms of Section 15 of the Act, the authority can make rules subject to the sanction of the State Government but the same has to be published in the gazettee. Our attention was further drawn to Section 17 of the Act whereby the Government has been empowered to notify the authority in which event the properties belonging to it shall vest in the Government. In such a situation it was submitted that in terms of the notification dated 15.7.70 issued by the State of Bihar, no court fee is payable. Learned Counsel, in support of his contention, has relied upon the decision in case of Sawar Mal Choudhary v. State Bank of India and Ors. reported in 1986 PLJR 660 as also 1985 PLJR NOC 3 and 1991 2 PLJR 45 SC.

7. The only question, therefore, which arises for consideration in this application is as to whether Respondent No. 3 was bound to pay court fee on the amount of claim sought to be recovered by way of public demand in the certificate proceeding. The State of Bihar In exercise of its power conferred upon it under Sub-section (1) of Section 48 of the said Act can act with special reference to Clause (o) of Sub-section (2) thereof and upon previous publication of the same under notification No. 4-4/1969-1 dt. 18-12-69 (printed Act 227) part II of the Bihar Gazettee on 28.1.70 and with the sanction of the State Govt. the Board of Revenue made the following rules:

Requisition made in respect of public demand payable to Government shall not be chargeable nor any court fee in view of Section 5 of the Act.

8. Admittedly, the Respondent-authority was created under 1974 Act. It is therefore, a statutory authority. As noticed hereinbefore, various powers had been conferred upon the State Govt. only by reason, of the provision of the Statute. Such powers would come to an end if the Statute itself is repealed.

9. The Respondent No. 3-authority, therefore, is statutory authority and thus a State within the meaning of Article 12 of the Constitution of India. It is not and cannot be the Government or a department of the Government. In our opinion a distinction has to be made between the State within the meaning of Article 12 of the Constitution of India and a Government. So far the State within the meaning of Article 12 of the Constitution is concerned, the same has limited application inasmuch as it is a State only for the purpose of part III and part IV of the Constitution of India, and for no other purpose. The employees of the Respondent Authority are not the employees of the State nor their conditions of services are governed by part XIV of the Constitution of India. Respondent No. 3

being a statutory body, its functions are restricted to the provisions of the 1974 Act itself. Section 5(2) of the said Act reads as under:

Every such requisition shall be signed and verified in the prescribed manner and except in such case as may be prescribed shall be chargeable with fee or amount which would be payable under Court Fees Act, 1870 in respect of a plaint in that recovery of some money equal to that stated in the requisition as being due.

10. A Division Bench of this Court in Kanhaiyalal Dabriwala v. State of Bihar and Ors. (supra) interpreting the aforementioned provisions held as follows:

It is clear that every requisition made u/s 5 of the Act except in such cases where it is exempted shall be chargeable with a fee of the amount which would have been payable under the Court Fees Act in respect of plaint for the recovery of a sum of money. From the notes appended to Section 5 of the Act it will appear that requisition made in respect of public demands payable to Govt. shall not be chargeable with any court fee.

11. As noticed hereinbefore, exemption notification dated 21.9.70 applies only to the public demand payable to Government. Evidently, the statutory authority is not a Government. It is now well known that if any person claims any exemption from payment of any tax or fee, it must satisfy that it comes within the purview of the notification whereby and whereunder such exemption has been granted. Such exemption notification has to be construed strictly. As no court fee was paid by Respondent No. 3, the entire certificate proceeding is vitiated in law and the action which has been taken in the proceeding thus is non-est in the eye of law and must, therefore, be held to be nullity.

12. In view of the fact that the entire proceeding is vitiated by reason of non-payment of court fee, the question of directing the Petitioner to seek alternative remedy at this stage does not arise. In Jogendra Lal Saha v. State of Bihar and Ors. 1991 (2) PLJR (SC) 45 the Supreme Court itself held as follows:

It is not disputed that learned Counsel for the Appellant is right in his submission that the instalment relating to third year was not due when the requisition was sent or the certificate case was signed. Therefore, the demand for the amount could not be included in the certificate. We might at this stage refer to the observations of the Privy Council in Baijnath Sahai v. Ramgunt Singh (1895) 23 Ind. App. 45, where it had been pointed out that the certificate proceeding is of an extraordinary nature and compliance of the requirement of the statute should be meticulously done. A the foot of the certificate in Form No. 1 prescribed under the Act the Certificate Officer has to certify in the following terms "I further certify that the above mentioned sum of Rs...is justly recoverable and its recovery by suit is not barred by law." In view of the fact that the third instalment has not fallen due by the date, the question of including that amount in the certificate did not arise. Therefore, the proceeding as taken was non-est in the law in terms of the decision referred to above.

13. The Supreme Court, however, keeping in view that the amount is admittedly, due, dismissed appeal relying upon the provisions of Sections 82 and 83 of the Forest Act and made it clear that the liability of the Appellant shall be confined to two instalments which were due for the second and third year and not for the third instalment which did not fall due and thus, was not a public demand. The Supreme Court, therefore, gave it the following directions:

The certificate officer before proceeding further shall apply his mind to the facts and if necessary hear the certificate debtor, ascertain the exact due, make an appropriate amendment in the certificate as required u/s 11 of the Act and proceed to recover the amount that he finds is still recoverable under law. The Appellant shall not be burdened with any claim of interest or other charges until the Certificate Officer modifies the certificate and liability for interest u/s 17 would run only from that date provided any amount has remained unpaid.

14. The aforementioned decision, therefore, has no application to the facts of this case. The certificate proceeding is not being quashed on mere technicality but on the ground that Respondent No. 3 did not pay any court fee on the certificate dues though it was liable therefor. The certificate proceeding, therefore, was a nullity in the eye of law in view of Section 5(2) of the Act.

15. In this case, as noticed hereinbefore, the writ Petitioner has raised several contentions including the question of limitation and/or her liability to pay any amount. It has also been questioned that Respondent No. 3 has no right to send a requisition for certificate without finally determining her objections with regard to her liability to pay the arrears of rent inter alia, on the ground that no lease in her favour could have been given with retrospective effect nor is she liable for payment of the rent which was payable by her deceased-husband, the impugned action could not have been taken. All the contentions raised by the Petitioner, therefore, in her objection u/s 9 of the Act were required to be considered by the Certificate Officer in the certificate proceeding.

16. In this view of the matter, the impugned order cannot be sustained. However, it goes without saying that it will be open to Respondent No. 3 to initiate a fresh certificate proceeding in accordance with law upon payment of due court fees and/or file an application before the Certificate Officer for acceptance of court fee which may be considered by the Certificate Officer on its own merits keeping in view the question of limitation and other relevant factors. However, it goes without saying that in such an event, it would be open to the Petitioner to raise all contentions before the Certificate Officer.

17. This application is, therefore, allowed. The impugned order dated 26.10.92 as contained in Annexure 7 to the writ application is quashed and the Respondents are hereby directed to put back the Petitioner in possession of the shop in question. However, there will be no order as to costs.

Narayan Roy, J.

18. I agree.

