

(2004) 10 JH CK 0004

In the Jharkhand High Court

Case No : Writ Petition (C) No's. 4190, 4192, 4269, 4274, 4299, 4302 and 4321 of 2004

Sita Ram Agarwal and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 5, 6, 7

Citation : (2004) 4 JCR 552

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : J.K. Pasari, for the Appellant; Sheela Prasad, GP IV, S.K. Verma, S.C. (Mines), P. Modi, GP I and M.K. Rai, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In all these writ petitions the petitioners have challenged the validity of the notices issued to them in various certificate proceedings u/s 7 of the Bihar and Orissa Public Demand Recovery Act (shortly "the said Act) for realization of rent of the shops in occupation of the petitioners. The petitioners have raised a pure question of law as to whether the Certificate Officer has any authority or jurisdiction to issue notices u/s 7 of the said Act without complying the mandatory requirements of law.

2. The petitioners are carrying on business in the open market in the shops allotted to them in the Principal Market Yard. Hazaribagh. The rent of the shops was time to time enhanced and for the recovery of rent respondent No. 3, the Secretary. Agricultural Produce Market Committee, Hazaribagh filed requisitions before the Certificate Officer-cum-Executive Magistrate, Sadar. Hazaribagh and on tile basis of the requisition certificate cases were instituted. The Certificate Officer, on receipt of the records and on deposit of Court fee by the certificate holder, issued notices u/s 7 of the said Act.

3. Mr. J.K. Pasari, learned counsel appearing on behalf of the petitioners submitted that no certificate, as required under Sections 5 and 6 of the said Act, was ever served upon the petitioners. According to the learned counsel a certificate, as required in Form I, has not even been prepared and signed by the Certificate Officer. learned counsel submitted that in absence of mandatory compliance of the provisions of the Act the certificate proceedings are vitiated in law and the notices issued by the Certificate Officer are wholly without jurisdiction.

4. Mr. V.P. Singh, learned counsel appearing on behalf of the Market Committee, on the other hand, submitted that rent of the shops were time to time enhanced and the validity of the enhancement of rent has been affirmed by this Court, Learned counsel submitted that even if notices were issued without serving certificate in Form I, the same being a procedural error and irregularity, the certificate proceedings cannot vitiate and the notices cannot be quashed.

5. On 30.8.2004 when these cases were taken-up for admission this Court directed the State counsel to produce the records of the certificate cases and pursuant to that the records of the certificate cases were produced on 13.9.2004. From perusal of the certificate cases it transpires that no certificate in Form I was signed by the Certificate Officer before issuance of notices u/s 7 of the said Act. As a matter of fact, no certificate in Form I was prepared and signed by the Certificate Officer and the same are not on records.

6. Mrs. Sheela Prasad. learned G.P. IV very fairly admitted that certificate in Form I was not prepared before issuance of notices u/s 7 of the said Act.

7. Section 5 of the said Act provides that when any public demand payable to any person other than the Collector is due, such person may send to the Certificate Officer a written requisition in the prescribed form. Every such requisition shall be signed and verified in the prescribed manner. Section 6 of the said Act casts a mandate on the Certificate Officer to record his satisfaction with regard to the fact that the demand is recoverable and shall sign the certificate in the prescribed form. The reason is that once a certificate is issued by the Certificate Officer in exercise of powers conferred by this section, it becomes a decree. It is well settled that signing of certificate by the Certificate Officer is not an empty formality. The Certificate Officer is expected to apply his mind and may sign the certificate on receipt of the requisition but only after being satisfied that the demand is recoverable by a certificate proceeding,

8. The proposition of law has been well settled by a Division Bench of the Patna High Court as far back as in 1958 in the case of Nageshwar Prasad Singh v. Rai Bahadur Kashinath Singh 1958 (6) BLJR 820. Their lordships observed as follows :

"It is abundantly clear, therefore, that the proper filing of the certificate, namely, the proper filling-up of the form and the signing of the same by the Officer concerned is an essential condition to give the Collector or the Certificate Officer the jurisdiction to issue a certificate under the Act, in my judgment the

provisions contained in Section 4 read with Form No. 1 of Schedule II appendix, are mandatory in the sense that the legislature intended that, if a certificate had to be issued under the Act, which had the force of a decree of a Court of law, that certificate must conform to the requirements of section and the form, otherwise the certificate cannot be said to be in accordance with the provisions of the Act. The principle is well settled that, if a thing is ordered by the legislature to be done in a particular manner, that thing must be done in that particular manner, and, if it is not done in the manner laid down by the law, it is invalid and of no effect - See *Howard v. Bodington*, *Bowman v. Blythe*, *Gifford v. The Bury Town Council*. *The Liverpool Borough Bank v. Turner*, *Jolly v. Handcock* and *Nussenmanjee Pestonjee v. Meer Mynoondeen Khan*. It is equally well established that, if a certain power granted to a public officer to be exercised in a particular manner or form is not exercised in the particular manner or form, it is invalid and without jurisdiction. Vide *Sutherland's Statutes and Statutory Construction*, 3rd Edition. Volume 3, page 100.

There can be no doubt that the provisions of the Public Demands Recovery Act have given power to the public officer concerned to issue a certificate having the force of a decree of a Court of law and that certificate should be couched in forms prescribed by the statute and, therefore, the provisions contained in the Act must be construed strictly and the public officer mentioned therein must conform to the form prescribed. To the like effect is the statement made in *Maxwell on the Interpretation of Statutes*. Tenth Edition page 376, where it is stated."

9. Their Lordships further observed :

"The net result of having considered all these cases is that the Certificate Officer must meticulously apply his mind to filling the certificate and filling in the columns and blanks correctly and in appending his certificate in the form prescribed and that the filling in of the forms is a matter of substance and is imperative, to give the certificate the force of a decree of Court of law, and if it is found that the certificate officer had not applied his mind at all and that some of the blank spaces were not filled-up, or were incorrectly filled-up, the document so prepared and filed is not a certificate under the Public Demand Recovery Act. In the present case, the name of the certificate holder is given as "Emperor", and it is obvious that debt due, namely the arrears of cess (collected by the Collector and payable to the District Board) were not debts due to the Emperor and, therefore, the Emperor was not the certificate holder. The certificate officer did not fill-up the blanks in the certificate portion of the form, and the name of the certificate debtor did not at all appear in the certificate or in the tabular form above the certificate. The name of the certificate debtor is, however, found on the back of the page, and one does not know as to when that name was written out on the back of the page. Even if it is supposed that the name of the certificate holder was given on the back of the certificate form, that would show without any doubt that the certificate officer, while giving his certificate under his signature on the

first page, did not at all apply his mind as to whether the form was properly and correctly filled-up, in that view of the matter, in my opinion, it must be held. as was held in the Privy Council case ILR Cal 775 that the certificate proceedings in this case were wholly invalid and that the Court below has rightly held that the sale held in execution of such a certificate was bad in law and must be set aside. The Courts must exact from the Collector or the Certificate Officer, under the Public Demand Recovery Act due performance of his duties under the Act and forms must be duly filled in and not in a slovenly fashion, and if the forms are not properly filled up, the officer concerned acts without jurisdiction, it must, therefore, be held that the sale was invalid and must be set aside."

10. Now coming back to the instant case, as noticed above, before issuance of notices u/s 7 of the Act admittedly the Certificate Officer did no record his satisfaction by meticulously examining the demand of the certificate holder and without signing the certificate in Form I, issued notices to the petitioners u/s 7 of the said Act, I have, therefore, no hesitation in holding that the impugned notices issued u/s 7 of the said Act are wholly without Jurisdiction and the same must be quashed.

11. For the aforesaid reasons these writ applications are allowed and the impugned notices are quashed. The Certificate Officer may act on the requisition sent by the concerned respondent only after complying the mandatory requirements of the provisions of the said Act.