

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15650 of 2021

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Shiv Ranjan Kumar, aged about 49 years, male, Son of Late Bidhyadhar Prasad Singh, at present residing at Harihar Chambers, Boring Road, P.S. Budha Colony, District Patna, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna.
2. The Engineer in Chief, Rural Works Department, Government of Bihar, Patna.
3. The District Magistrate, District Bhagalpur, Bihar.
4. The District Certificate Officer, District Bhagalpur, Bihar.
5. The Executive Engineer, Rural Works Department, Works Division, Naugachhia, District Bhagalpur.

... .. Respondents

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Appearance :

For the Petitioner : Mr.Prabhat Ranjan, Advocate

For the Respondents : Mr. Kameshwar Pd. Gupta, GP-10 with
Mr. Satyavart, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 21-03-2022

By this writ application, the petitioner has sought quashing of the entire proceedings arising out of Certificate Case No. 3 of 2021-2022, including the notice dated



14-07-2021 issued under Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 (for short 'the Act'). The petitioner has also sought a direction restraining the respondents from proceeding further with the Certificate Proceedings.

2. It is submitted by Mr. Prabhat Ranjan, learned counsel for the petitioner that the amount of Rs. 13,53,362/-, which is sought to be recovered, as a 'public demand' within the meaning of Section 3(6) of the Act, is not a public demand.

3. In view of the said submission, it is considered useful by this Court to reproduce Section 3(6) of the Act which defines "public demand".

"3(6) "Public demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon upto the date on which a certificate is signed under Part II; and"

4. In view of the reference to Schedule I in the definition of "Public demand" Schedule I also requires to be considered. Schedule I of the Act enumerates the circumstances in which any arrear of revenue which remains due may come within "Public demand". The petitioner's counsel has laid emphasis on Clause 9 of Schedule I which reads as follows:-



“9. 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.”

5. The submission, therefore, is that unless an agreement by written instrument authorizing recovery of any money by resort to the Act, the Certificate Officer, as in the instant case, would have no jurisdiction and the proceeding, before the Certificate Officer, in the Certificate Case No. 3 of 2021-22, impugned in the instant writ petition, is without jurisdiction.

6. In support of this submission, he has submitted that Clause-32 of General Conditions of Contract (for short ‘GCC’) regarding defect liability period and routine maintenance of roads construction/ upgradation under the *Pradhan Mantri Gram Sadak Yojana* (‘PMGSY’ for short), for five years could be applied only after the works were completed. In the instant case, the work of road was not completed and the quantification of defect liability sought to be recovered as a public demand under Clause 53.1(ii) of the Standard Bidding Document (‘SBD’ for short) is thus not a public demand within the meaning of Section 3(6) of the Act. Institution of Certificate Proceedings is, therefore, wholly without jurisdiction. It is, however, not in dispute that the Contract



contains an agreement in Clause 53.1(ii) of the SBD for PMGSY that money payable which remains unrecovered shall be recoverable as a public demand.

7. Substance of the submission is that the conditions for recovery of the amount as arrears of land revenue/public demand are not satisfied in terms of Clause 53.1(ii).

8. Since the conditions under Contract for resorting to the provisions of the Act were not fulfilled, the Certificate Proceedings are without jurisdiction, he would contend.

9. On a query made by this Court, as to what prevents the petitioner from filing his objection under Section 9 of the Act, raising the issue that the amount has not become recoverable in terms of the Contract, Mr. Prabhat Ranjan, learned counsel for the petitioner, has submitted that the Certificate has already been filed with the Certificate Officer. He has placed Section 6 of the Act, which, in view of the submissions, would be useful to reproduce, and reads as follows:-

“6. Filling of certificate on requisition.- On receipt of any such requisition the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate, in the prescribed form, stating that the demand is due



and shall include in the certificate the fee if any paid under Section 5, sub-section (2), and shall cause the certificate to be filed in his office.”

10. Referring to this provisions, it is submitted that the filling /signing of Certificate is only after the Certificate Officer is satisfied that the demand is recoverable. Once this satisfaction has been recorded, it would be futile to approach the Certificate Officer under Section 9 of the Act by filing a petition denying liability. Once the Certificate Officer is satisfied regarding recoverability of the amount, leading to signing of the Certificate, clearly it is not open to question. In this connection, he places reliance on decision of the Apex Court in case of ***S. R. Bommai & Others vs. Union of India & Others*** reported in ***(1994)3 SCC1***, more specifically paragraphs 59, 60 and 74 thereof.

11. The State counsel, however, has denied the submission. He has stated that paragraphs 53.1(ii) of the Standard Biding Document clearly speaks that if the contract is terminated because of fundamental breach of contract, the Engineer will assess the cost of having the defect corrected and if the total amount due to the employer exceeds any payment due to the contractor, the difference shall be



recovered from the Security Deposit and Performance Security. The amount still remaining unrecovered, are to be recovered from any dues payable to the Contractor from the State or any other State Government works, including Public Sector works executed by the Contractor. Still, if any amount, remains unrecovered, the same was to be recovered as arrears of land revenue. Since the liability of the petitioner has already been fixed under the norms of the Department, the fact that the works were not completed by the petitioner in time, or that the petitioner's application for grant of extension of time was pending is hardly of any relevance. The petitioner is liable for the amount in question having committed fundamental breach of the Contract. The agreement has been rescinded since the petitioner failed to complete the works in question. Security deposit and performance security deposit were forfeited as per Clause 53 of the standard bidding document. The amount of liability towards risk and cost remaining thereafter was also sought to be recovered from the petitioner by the Office Letter dated 18-03-2021 bearing Memo No. 510 (Annexure -J to the counter affidavit) with a clear stipulation that in case of failure to deposit the said amounts action would be initiated against the provisions of the Act. Referring to Clause 53 of the SBD



dealing with “payment upon termination”, the respondents have taken a stand that termination is due to fundamental breach of the Contract. Whether the work is complete or not, Clause 53.1(i) to 53(ii) are terms of the Contract, which have to be construed in furtherance of the intent of clause 53, being payment upon termination. The State respondents have relied upon Clause 53 of the SBD as a whole, for justifying the resort to the Act for recovery of the amount as a public demand.

12. In the opinion of this Court, the issue whether Clause 53.1(ii) can be relied upon by the respondent State having regard to the relevant facts leading to rescinding of the Contract in question is an issue of fact *vis-a-vis* the meaning, intent and interpretation of Clause-53 of the SBD. This Court, therefore, would observe that the submission of the petitioner’s counsel that resort to PDR proceedings and issuance of the notice and service of copy of notice under Section 7 of the Act is without jurisdiction is not sustainable. In the instant case, the Court is of the opinion that once the agreement contains a Clause for recovery of the, unrecovered remaining amount under Clause-53 of the SBD as an arrear of land revenue, it cannot be said that the Certificate issued by the



Certificate Officer is without jurisdiction.

13. Had there been no agreement in the written instrument executed between the parties, then the petitioner may have contended that the certificate officer had no jurisdiction to entertain the requisition and the amount was not recoverable as a public demand/arrears of land revenue.

14. Having said so, this Court would refer to decision of the Apex Court in case of *Nusli Neville Wadia Vs. Ivory Properties and others* reported in (2020) 6 SCC 557, wherein, there is an elaborate discussion on expression “jurisdiction”. The Apex Court has affirmed its earlier decision in case of *Kamalakar Eknath Salunkhe Vs. Baburav Vishunu Javalkar and others* reported in (2015) 7 SCC 321. Paragraph 16 of the said judgment dealing with the expression “jurisdiction” is considered relevant in view of the submission advanced by the petitioner’s counsel regarding the Certificate Officer being rendered without jurisdiction since the conditions precedent contemplated under Clause 53.1(ii) for recovery of amounts as arrears of land revenue are not satisfied. Paragraph 16 of the judgment in case of *Kamalakar Eknath Salunkhe* (supra) reads as follows:-

“16. The expression “jurisdiction” in Section 9-A is used in a narrow sense, that is,



the court's authority to entertain the suit at the threshold. The limits of this authority are imposed by a statute, charter or commission. If no restriction is imposed, the jurisdiction is said to be unlimited. The question of jurisdiction, sensu stricto, has to be considered with reference to the value, place and nature of the subject-matter. The classification into territorial jurisdiction, pecuniary jurisdiction and jurisdiction over the subject-matter is of a fundamental character. Undoubtedly, the jurisdiction of a court may get restricted by a variety of circumstances expressly mentioned in a statute, charter or commission. This inherent jurisdiction of a court depends upon the pecuniary and territorial limits laid down by law and also on the subject-matter of the suit. While the suit might be barred due to non-compliance with certain provisions of law, it does not follow that the non-compliance with the said provisions is a defect which takes away the inherent jurisdiction of the court to try a suit or pass a decree. The law of limitation operates on the bar on a party to agitate a case before a court in a suit, or other proceedings on which the court has inherent jurisdiction to entertain but by operation of the law of limitation it would not warrant adjudication.”

15. Relying on this dicta of the Apex Court, this Court



finds that Clause 53.1(ii) of the Contract, does not take away inherent jurisdiction of the Certificate Officer to examine the issue. It may or may not be possibly viewed as imposing a restriction on the exercise of jurisdiction by the Certificate Officer to recover only such amounts as arrears of land revenue, which are to be recovered due to non-compliance of the requirement regarding defect liability period and routine maintenance of roads, post completion of the Contract. Since the agreement contains a clause for recovery of amounts as arrears of land revenue “public demand”, this Court is not persuaded to accept the submission of the petitioner’s counsel that there is total lack of jurisdiction in the Certificate Officer to consider the recoverability of the amount under the Scheme of the Act based on petitioner’s denial of liability by way of an application under Section 9 of the Act.

16. This Court would find that submissions made by the petitioner’s counsel, based on Section-6 of the Act, are misconceived and erroneous. Section 6 of the Act talks about satisfaction of the Certificate Officer that the demand is recoverable and that recovery by suit is not barred by law. It is not a conclusive satisfaction regarding the amount sought to be recovered as the same is yet to be considered by the Certificate



Officer after hearing the petition denying the liability which is to be filed under Section 9 of the Act. Only thereafter, the Certificate Officer under the Scheme of the Act is to determine whether the Certificate-debtor is liable for the whole or any part of the amount, for which, the certificate was signed. After such determination, it is open to the Certificate Officer under Section 10 of the Act to set aside, modify or vary the Certificate accordingly. Jurisdiction of the Certificate Officer is, therefore, not limited under Section 10 of the Act. Submission of the petitioner's counsel that the satisfaction recorded while signing the Certificate under Section 6 of the Act is final and conclusive and not open to any dispute determination with regard to the amount or recoverability thereof is fallacious. The Scheme of the Act contemplates filing of an objection denying the liability in whole or in part under Section 9 of the Act and thereafter hearing and determination of the petition filed by the Certificate-debtor under Section 10 of the Act which enables the Certificate Officer to set aside, modify or vary the Certificate accordingly.

17. Submission of the petitioner's counsel placing reliance on decision of the Supreme Court in case of **S.R. Bommai** (supra), to say the least, is unsustainable. Paragraphs



relied upon by the petitioner's, in the case of ***S.R. Bommai*** (supra), deal with and consider the President's subjective satisfaction based on objective material whether the parameters of the condition precedent to issuance of the proclamation under Article 356(1) of the Constitution of India are sustainable or not to conclude that there is a case of failure of Constitutional machinery in the State. Satisfaction of the President under Article 356 of the Constitution of India, has the extreme and severe effect of dissolving a duly elected State Legislature/Assembly. The Supreme Court and the High Court exercising writ jurisdiction are sentinels on the *qui vive* and the Constitutional Scheme warrants that the moment there is a breach of fundamental rights, which specifically in the case of ***S.R. Bommai*** (supra), was the right to democratic Government, the Court must act to safeguard the Constitutionally cherished fundamental rights. It is, in this context, that the Apex Court in case of ***S.R. Bommai*** (supra), and the subsequent cases, thereafter, relying upon the said judgment has laid down the law that exercise of power by the President under Article 356(1) to issue a proclamation is subject to limited judicial review to review whether there existed material for the satisfaction of the President and that it



is not the personal whim,wish, view or the *ipse dixit* of the President *de-hors* the material, but a legitimate inference drawn from the material placed before him.

18. In the opinion of this Court, no parallel can be drawn between the scope of judicial review, in the matter of exercise of powers by the President under Article 356 as expounded by decision of the Apex Court, in case of ***S.R. Bommai*** (supra); and the scope of judicial review with respect to a proceedings for recovery of amounts as arrears of land revenue (public demand), by invoking the provisions of the Act. The Act, as considered above, itself provides for making objections, and denying liability under Section 9 of the Act. The Certificate Officer, after hearing the party, taking evidence (if necessary) is to determine whether the Certificate-debtor is liable at all, or in part for the amount for which the Certificate is signed. It is open to the Certificate Officer to entirely set aside the demand, modify or vary the same.

19. Since the satisfaction recorded under Section 6 of the Act is subject to denial of liability under Section 9 of the Act and hearing and determination on such petition under Section 10 of the Act, the facts and the statutory provisions in the instant case, renders the instant case to be factually and



legally distinguishable from the case of *S. R. Bommai* (supra) relied upon by the petitioner.

20. In view of the jurisdiction of the Certificate Officer under Section 10 of the Act, to set aside, modify or vary the Certificate, this Court would observe that denial of liability with reference to the Contract and the factual disputes raised by the petitioner regarding the quantification of the demand and enforceability thereof are issues which, in fact, can be better raised by the petitioner with reference to the various documentary evidence before the Certificate Officer. In the circumstances, this Court would refuse to exercise discretionary writ jurisdiction and enter into such disputed issues regarding quantification and enforceability of the demand having regard to the terms of the contract under which the demand has been raised. The same are purely contractual issues lying in the realm of private law without any public law element.

21. Since this Court does not consider it a fit case to enter into such disputed issues lying in the realm of private law, based on terms of Contract, this Court makes it clear that anything observed in the instant judgment may not be deemed to be an expression of the Court on the merits of the



petitioner's claim vis-a-vis the demands sought to be recovered in Certificate Case No. 03/2021-2022. All factual disputes and issues regarding quantification and its recoverability are left to be decided, should the petitioner be advised to avail the statutory remedy by filing a petition denying liability under Section 9 of the Act.

22. The writ petition is dismissed in the aforesaid terms.

(Madhuresh Prasad, J)

I agree.

Chakradhari Sharan Singh, J:

(Chakradhari Sharan Singh, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	02-03-2022
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