
Smt. Mani Kumari Dei Vs State of Orissa and Others

Orl. Journ. Case No. 1114 of 1976

Court: Orissa High Court

Date of Decision: Dec. 5, 1981

Acts Referred:

Orissa Public Demands Recovery Act, 1962 " Section 37(1)

Citation: AIR 1982 Ori 108 : (1982) 53 CLT 375

Hon'ble Judges: R.N. Misra, C.J; R.C. Patnaik, J

Bench: Division Bench

Advocate: L. Rath, B.S. Misra and J.K. Rath, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

R.C. Patnaik, J.

The petitioner who secured a loan of Rs. 10,000/- under the Middle Income Group Housing Scheme has sought shelter

under the extraordinary jurisdiction of this Court for issue of a writ of certiorari quashing the proceedings in Certificate Case No. 11 (DIO) of

1970 (Certificate Case No. 69 of 1965-66) and certain orders of attachment and sale of the property in the said certificate proceeding.

2. A proceeding under the Orissa Public Demands Recovery Act, 1962 was started on a requisition sent by the District Loans Officer, Cuttack.

The certificate was drawn up and filed on 17-12-1966. Notice was issued to the certificate-debtor. Though there is some controversy regarding

service of notice, that question is not relevant, Order dated 14-9-66 shows that in execution of distress warrant, moveables belonging to the

petitioner were attached and sale of such articles was directed to be held on 10-10-66. The proceeding thereafter went through a chequered

career. It is gathered from order dated 19-7-1972 that the petitioner complained before the Certificate Officer that valuable moveable properties

belonging to her were attached in pursuance of the order passed in the Certificate Proceeding and kept in the custody of the jimadar and no

warrant of arrest, therefore, should have been issued without a finding that the sale proceeds were not sufficient to cover the certificate dues. She

complained, justifiably, that further coercive process could be resorted to if there was demand, still unsatisfied by the proceeds received from the

sale. The Certificate Officer was put in a very awkward position because order-sheets subsequent to 26-12-1968 till 11-12-1970 were missing

from the record. The Certificate Officer observed as follows:--

On perusal of the records it is seen that the Certificate Officer in his order dated 14-9-1966 has stated that moveables of the certificate-debtor

have been attached and the Certificate Officer has also ordered for sale of the attached property. But the details of the property attached and the

person with whom the property was kept in jima is not available in the record. The record is duly page marked and title page filled up before the

case record was sent to the higher court to hear the appeal. There is no mention of the missing records in question in the title page. In absence of

any record, it cannot be said with certainty that the property of the certificate debtor has actually been attached and kept with jimadar as

contended by the learned advocate for the certificate debtor.

However, the matter requires investigation. Bench Clerk to find out if the relevant records are available with him. The name of the Bench Clerk

who was in charge of the record during the relevant period may be ascertained.....

The case was adjourned for sometime pending investigation. On 27-4-1974 the case was taken up and the following order was passed :--

Order dated 19-7-1972 Has not been complied with. Bench Clerk to put up the petition stated to have been filed on 19-7-1972 as mentioned in

the above order. If the certificate debtor"s moveables had been attached, that would certainly have been mentioned in the records. Besides a copy

of the attachment order also would have been available with the certificate debtor. In absence of any such record, the contention of the certificate

debtor appears to be frivolous.....The Certificate debtor has not taken any steps to pay the certificate dues. Issue notice in Form II (notice for

settling a sale proclamation) to the certificate debtor.

3. It is worthwhile to mention here that 27-4-1974 was not the date to which the case was posted. On 6-11-1973 the case was posted to 23-11-

1973 and no date was fixed thereafter. The case was taken up 5 months later on 27-4-1974 without notice to the certificate-debtor and behind

her back and the order for settling the notice for sale proclamation was passed and notice was issued.

4. Certificate proceeding is a judicial proceeding and the Certificate Officer is a court. It was incumbent on the Certificate Officer to deal with the

grievance of the party appearing before him in a judicious manner. Orders passed by the Certificate Officer have impact on the rights and liabilities

of the certificate-debtor and persons appearing before him. Orders may have far-reaching consequences. It is, therefore, meet and proper that the

matters should be dealt with in a fair and just manner be fit-ting a court of justice, Casualness is abhorrent to Sudicial process.

5. The Certificate-debtor had been persistently complaining that in execution of distress warrant issued in the certificate proceeding, moveable

property belonging to her had been attached and kept in custody of a jimadar. A date had been fixed for sale and so long as it was not found that

the dues could not be satisfied by the sale proceeds of the moveables, if was not open to the Certificate Officer to take any coercive step against

the certificate-debtor whether by way of arrest or issue of further distress warrant ifor realisation of certificate dues. The objection raised was

substantial and merited determination. It was not open to the Certificate Officer to brush off the said objection and sidetracking the same, issue

coercive process because authority or power is vested in him under the Act. With the power went the duty of acting judich ously. The order dated

27-4-1974 displayed a lamentable lack of judicial approach in the Certificate Officer. Tha objection raised by the Certificate-debtor may have

appeared to be inconvenient to him but the short-cut in answer was surely not issue of coercive process. Order dated 14-9-1966 reads :--

The D. W, Returned after attachment of moveables as per the list enclosed to the D. W. Issue sale order fixing sale on 10-10-1966 returnable by

20-9-1966. A copy of the S. O. should be served on the C. Dr, Issue notice to the jimadar to produce the articles on the date fixed"".

After perusal of this order can there be any doubt that the moveables belonging to the certificate-debtor had not been attached and kept in the

custody of a Jimadar as observed by the Certificate Officer? He, in my opinion, is guilty of gross dereliction of duty. Rights of citizens are not to be

tinkered with.

6. The sorry state of affairs reflect ed in the record of the certificate proceeding constrained the counsel appearing for the State to fairly concede

that the action of the Certificate Officer is unsupportable. It is not discernible from the records as to what happened between 26-12-68 and 11-

12-70, Whereabouts of the moveables are unknown, In such state of affairs, we were inclined to quash the certificate and declare that the

certificate-debtor was no longer liable in respect of any amount relating, to the loan taken by her under the Middle Income Group Housing

Scheme.

7. The counsel for the petitioner, However, submitted that his client was willing to pay Rs. 4,000/- towards the dues within a period of three

months. Nothing could be a more fair offer from the point of view of the State and the counsel for the State accepted this offer. So we direct that

on the petitioner depositing Rs. 4,000/- in the certificate court within three months from today, the proceeding shall be quashed and the demand of

the State under Bond No. 11 of 1960-61 under the Middle Income Group Housing Schema shall be treated as fully satisfied.
How-ever, in the

tevent of default of the petitioner, the certificate after due amendment, shall proceed for Rs. 4,000/-with interest accruing from today.

8. In the result, the writ application is allowed. No costs.

R.N. Misra, C.J.

9. I agree.