

(2002) 05 JH CK 0017

Jharkhand High Court

Case No: Writ Petition (C) 594 of 2002 with CWJC No. 3500 of 1999 (R)

Smt. Renu Jaiswal and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: May 6, 2002

Acts Referred:

- Bihar and Orissa Public Demands Recovery Act, 1914 - Section 9

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: Anil Kumar Sinha and Atanu Banerjee, for the Appellant; Pradip Modi, G.P.I. and Azeemuddin, J.C. to G.P.I., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.J. Mokhopadhaya, J.

In both the cases, the common petitioners have challenged the orders both dated 7th August. 1999, passed by the learned Certificate Officer, Sadar, Chaibasa in Certificate Case Nos. 16 and 17 (Excise)/ 78-79 respectively.

2. As the cases can be disposed of on short point, it is not necessary to discuss all the facts, claim and counter claim of the parties, except the relevant one.

3. The certificate cases aforesaid were initiated under Bihar Public Demand Recovery Act, 1914 on requisitions by the Assistant Commissioner of Excise, Chaibasa for recovery of Excise dues against Laxmi Prasad Sao (since deceased).

4. On notice, said Laxmi Prasad Sao (since deceased) filed objection u/s 9 of the Act and taken stand that apart from him, the business belonged to M/s. Thakur Prasad Sao and Shiv Shankar Prasad Sao as partners.

5. Notices were issued to Thakur Prasad Sao and Shiv Shankar Prasad Sao, whereinafter they were impleaded as parties in the certificate proceedings.

6. Shiv Shankar Prasad Sao and another then moved before this Court in CWJC No. 587 of 1993 (R) which was disposed of by this court by Judgment dated 19th August, 1998. By the said Judgment, while the Court upheld the order of addition of the aforesaid persons as parties to the certificate case observed that the impleaded parties i.e. Shiv Shankar Prasad Sao and Thakur Prasad Sao may file their respective objections u/s 9 of the Act.

7. The grievance of the petitioners is that thereafter Certificate Cases, aforesaid, were taken up and vide impugned orders both dated 7th August, 1999, the Certificate Officer while impleaded the heirs of deceased Laxmi Prasad Sao, in whose name the licence was issued, but deleted the Respondent No. 4, Shiv Shankar Prasad and Respondent Nos. 5 and 6, i.e. heirs of Late Thakur Prasad Sao, giving wrong reference of the aforesaid judgment of the High Court.

8. It will be evident from the impugned orders both dated 7th August, 1999 that the Certificate Officer observed that the order dated 19th January, 1993 was quashed by the High Court and Shiv Shankar Prasad and heirs of Late Thakur Prasad Sao were not impleaded as parties which is based on presumption, and is far from truth.

9. Notices were issued to Respondents Shiv Shankar Prasad (Respondent No. 4) and heirs of Late Thakur Prasad Sao (Respondent Nos. 5 and 6).

10. The counsel for the Respondent No. 4 accepts that the order was passed on 7th August on presumption but, according to him, Shiv Shankar Prasad or heirs of Late Thakur Prasad Sao are not liable to pay any part of the certificate amount.

11. Having regard to the facts and circumstances of the case, as the impugned orders both dated 7th August, 1999, were passed in Certificate Case Nos. 16 and 17 (Excise)/78-79, on wrong interpretation of the High Courts judgment and on wrong presumption, those orders are set aside.

12. The cases are remitted to the Certificate Officer, Sadar, Chaibasa, West Singhbhum for their determination on merit, taking into consideration the objections filed by the parties, their argument and the evidences, as may be placed by them.

13. Both the writ petitions stand disposed of.