

IN THE HIGH COURT OF JHARKHAND AT RANCHI

[Civil Writ Jurisdiction]

W.P.(C) No. 4663 of 2005

Sarswati Devi & Ors. Petitioners
Versus
State of Jharkhand & Ors. Respondents

CORAM :HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through :-Video Conferencing)

For the Petitioners : Mr. Anil Kumar, Sr. Advocate
Mr. Satish Kumar Keshri, Advocate
For the Resp.-State : Mr. P.C. Roy, S.C. (L&C)-I

08/ 08.09.2021.

Learned Sr. counsel for the petitioner, Mr. Anil Kumar has submitted that writ petition was filed by petitioner, Jhaladi Yadav, S/o Late Gobardhan Yadav, R/o Village- Baban Kheta, P.O. + P.S. Saraiyahat, Dist.- Dumka against the notice dated 06.06.2005 issued by the respondent no.5- District Certificate Officer, Dumka for recovery of Rs.1,19,106/- as excess payment made to the petitioner with regard to the compensation for the land acquired for the purpose of Railway Track.

Learned Sr. counsel for the petitioners has further submitted that original judgment debtor has died and thereafter substitution petition has been filed vide I.A. No. 938 of 2013, which was allowed vide order dated 14.03.2013 substituting the name of legal heirs of the original judgment debtor/petitioner which are as follows:-

- i. Sarswati Devi W/o Late Jhaladi Yadav
- ii. Sudhir Yadav, S/o Late Jhaladi Yadav
- iii. Sunil Yadav, S/o Late Jhaladi Yadav
- iv. Suresh Yadav, S/o Late Jhaladi Yadav
- v. Subhash Yadav, S/o Late Jhaladi Yadav

All residents of Village- Baban Kheta, P.O. + P.S.- Saraiyahat, District- Dumka, Jharkhand.

Learned Sr. counsel for the petitioners has further submitted that in view of Section 52 of the Bihar and Orissa Public Demands Recovery Act, 1914 the procedure on death of the certificate debtor has to be followed by the Certificate Officer by issuing notice upon legal representative of deceased under Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914.

Section 52 of the said Act, 1914 may profitably be quoted hereunder:-

52. Procedure on death of Certificate-debtor. -(1) Where certificate-debtor dies before the certificate has been fully satisfied, the Certificate Officer may, after serving upon

the legal representative of the deceased a notice in the prescribed form proceed to execute the certificate against such legal representative and the provisions of this Act shall apply as if, such legal representative were the certificate debtor and as if such notice were a notice under Section 7:

Provided that where the certificate is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Certificate Officer executing the certificate may, of his own motion or on the application of the certificate-holder compel such legal representative to produce such accounts as the Certificate Officer thinks fit.

(2) for the purposes of this Section, property in the hands of a son or other descendant which is liable under Hindu Law for the payment of the debt of a deceased ancestor, in respect of which a certificate has been filed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

Learned Sr. counsel for the petitioners has thus submitted that in such view of the matter, he does not want to press the writ petition at this stage as no notice has been issued under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 to the substituted legal heirs by the respondent no.5- District Certificate Officer, Dumka.

Learned counsel for the State, Mr. P.C. Roy has submitted that this writ petition may be adjourned for two weeks so as to seek instruction whether notice under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 has been served upon the substituted legal heirs of original judgment debtor/petitioner?

Considering the same, put up this case on 29.09.2021.

(Kailash Prasad Deo, J.)