MANU/BH/0010/1987

Equivalent Citation: AIR1987Pat107, 1987PLJR47

IN THE HIGH COURT OF PATNA
FULL BENCH

Civil Writ Jurn. Case No. 1111 of 1981

Decided On: 12.11.1986

Appellants: **Ram Chandra Singh**
Vs.
Respondent: **State of Bihar and Ors.**

Hon'ble Judges/Coram:
S.S. Sandhawalia, C.J., N.P. Singh and S.S. Hasan, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Rana Pratap Singh, Lalit Kishore and Akhileshwar Prasad Singh, Advs.

For Respondents/Defendant: Ram Balak Mahto, Adv. General, Kamlapati Singh, Govt. Pleader No. 5, S. Rafat Alam, Jr. Counsel to Adv. Counsel and Ishwari Singh, Jr. Counsel to Govt. Pleader No. 5

JUDGMENT

S.S. Sandhawalia, C.J.

1. Whether Article 7 of Schedule I of the Bihar and Orissa Public Demands Recovery Act, 1914, entitles the Collector to recover the agreed settlement amount from settlee of a hat, bazar or mela in the absence of a duly executed registered lease deed, is the ticklish question requiring adjudication in this Full Bench. Directly on the issue is the contrary view of the Division Bench in S.A. Mannan v. State of Bihar ILR (1958) Pat 302, followed later in Prabhunath Singh v. The State of Bihar 1980 BBCJ (HC) 344.

2. The facts are not in serious dispute. On the 1st April, 1977, an open auction was held in the presence of Shri Awadhesh Prasad Singh, Deputy Collector Gaya, for the settlement of hat in Khizersarai for the year 1977-78. The petitioner along with others participated therein and deposited Rs. 600/- as security money and the bid was knocked down in favour of the petitioner for Rs. 11,501/- only as the highest bidder. It is the petitioner's claim that he later deposited Rs. 5,400/- with the Anchal Adhikari, though, admittedly, no receipt whatsoever was issued by him. It is then averred on behalf of the petitioner that neither any parwana or any toll chart was issued in favour of the petitioner and further no registered lease deed was executed betwixt the respondent State and the petitioner, as required by Rule 7-T of the Bihar Land Reforms Rules, 1951. It is his case that only by virtue of the terms of agreement executed in the Prescribed Form 'P(4)' that the arrears of rent or interest, etc., with regard to such settlement can be made recoverable under the Bihar and Orissa Public Demands Recovery Act, 1914, (hereinafter to be referred to as 'the Act'). The further case sought to be set up on behalf of the petitioner is that he applied before the Anchal Adhikari for issuance of toll chart or parwana, which, however, was not issued, and, consequently, he did not collect the tolls' from the said bazar even for a single day. Later the petitioner moved an application for the refund of the total

amount of Rs. 6000/- vide Annexure '1' to the writ petition. Far from this being done a notice dated 29-11-1977 was issued by the Anchal Adhikari, Khizersarai, demanding deposit of the bid money of Rs. 11,501/- from the petitioner and in reply thereto he denied any such liability and reiterated his demand for the refund instead. Later a certificate, proceeding was initiated against the petitioner and a notice dated 19-12-1977 under Section 7 of the Act was issued vide Annexure '2'. The petitioner filed an objection before the Certificate Officer, Gaya, (respondent No. 3), who rejected the objection vide his order dated 24-1-1978 and with some modification directed realisation of the amount. The petitioner thereafter preferred an appeal under Section 60 of the Act before the Additional Collector, who, after hearing the parties, rejected the same vide Annexure '4' dated 18-3-1981. Aggrieved thereby the present writ petition was preferred, inter alia, challenging the very maintainability of the certificate proceeding against him under the Act, primarily on the ground that no registered lease deed had been formally executed betwixt him and the respondent State.

3. In the counter-affidavit filed on behalf of the respondents the factum of holding of an open auction and the bid having been knocked down in favour of the petitioner as the highest bidder for Rs. 11,501A is clearly admitted. However, the petitioner's claim that he had subsequently deposited Rs. 5,400/-with the Anchal Adhikari, who allegedly did not issue any receipt, is stoutly denied and it is stated that he never deposited any amount and the coined out version is entirely false. It is averred that the petitioner started collecting tolls from Khizersarai Bazar despite the fact that he had not deposited the requisite money and further though the bid chart was duly issued vide Memo No. 409 dated 1-12-1977, (vide Annexure 'B' to the counter-affidavit) the petitioner refused to accept the same. It is admitted that no registered lease deed could be executed but the petitioner had put his signatures on the bid sheet dated 1-4-1977 in token of the fact that he had agreed to abide by the order or instructions of the Officer and that he had agreed to take settlement at Rs. 11,501/-. It is reiterated that the petitioner had in fact continuously collected tolls after the bid was knocked down in his favour. The Anchal Adhikari directed the Circle Inspector to hold an enquiry about the collecting of the tolls and vide his report (Annexure 'C') he clearly held that the petitioner was collecting the same from Khizersarai Bazar ever since 1-4-1977. The other pleadings made on behalf of the petitioner are stoutly controverted and the impugned orders, Annexures 3 and 4, are averred to be legal and unimpeach-able.

4. This writ petition originally came up before my learned Brother Hasan, J. sitting singly. Before him reliance on behalf of the petitioner was sought to be placed on 1980 BBCJ (HC) 344 (supra). Expressing some doubt about the correctness of the view therein the matter was referred to the Division Bench. For somewhat similar reasons the Division Bench referred the case to the larger Bench. That is how it is before us now.

5. Mr. Rana Pratap Singh, learned counsel for the petitioner, first isolated the words "interest in land" from its broad context in Article 7 of Sch, I and then pinned himself thereon with legalistic literality for contending that in law no interest in land above the value of Rs. 100/- can even be created except by a formal deed duly executed and registered. It was submitted that Article 7 must be narrowly and strictly construed to include only those interests in land which are ejusdem generis thereto and unless a registered deed in conformity with the Transfer of Property Act had been drawn up, no such right, title or interest in land could arise. Consequently the provisions of Article 7 in such a situation can never come into play. In the alternative

it was argued that a profit a prendre was equally an interest in land and required the identical legal formalities of execution and registration. Even more specifically it was argued that Rule 7-T of the Bihar Land Reforms Rules, 1951 mandated a deed to be drawn up in form P(4) for the settlement of Hat and this having not admittedly been done would preclude the applicability of the Schedule. Basic reliance was placed on S. A. Mannan v. State of Bihar ILR (1958) Pat 302 and other cases in line therewith which, in turn, have been followed by the Division Bench in Shri Prabhu Nath Singh v. The State of Bihar 1980 B.BCJ (HC) 344.

6. There is no gainsaying the fact that the aforesaid two authorities directly and squarely go in aid of the petitioner's stand. However, it is the correctness of the ratio therein which is hotly put in issue and has, indeed, necessitated this reference to the larger Bench. The view in the aforesaid cases and others of the same tenor having held the field for a considerable time in this jurisdiction thus requires an in-depth and somewhat exhaustive examination.

7. Inevitably the controversy herein has to turn on the language of the relevant provisions of the Act and primarily Article 7 of the First Schedule thereto in the context in which it has been set. One may, therefore, at the very outset read the relevant provisions for facility of reference : --

> Preamble "An Act to consolidate and amend the law relating to the recovery of Public Demands in Bihar and Orissa.
>
> Whereas it is expedient to consolidate and amend the law relating to the recovery of public demands in Bihar and Orissa;
>
> And whereas the previous sanction of the Governor-General has been obtained, under Section 5 of the Indian Councils Act, 1892, to the passing of this Act.
>
> It is hereby enacted as follows : --x x x x x "

"3. Definitions.-- In this Act, unless there is anything repugnant in the subject or context : --

> "(4) 'movable property' includes growing crops :
>
> > (6) 'public demand' means any arrear or money mentioned or referred to irr Schedule I, and includes any interest which may, by law, be charge'able thereon up to the date on which a certificate is signed under Part II" and
> >
> > > "Schedule I.
> > >
> > > > **1.** Any arrear of revenue which remains due in the following circumstances, namely;
> > > >
> > > > xxxxx
> > > >
> > > > **2.** Any arrear of revenue which is due from a farmer on account of an estate held by him in farm, and is not paid on the latest day of payment fixed under Section 3 of the Bengal Land-revenue Sales Act, 1859 (XI of 1859).

3. Any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process authorized for the recovery of arrears of revenue or of the public revenue or of Government revenue.

4. Any money which is declared by any enactment for the time being in force : --

(i) to be a demand or public demand; or

(ii) to be recoverable as arrears of a demand or public demand, or as a demand or public demand; or

(iii) to be recoverable under the Bengal Land-revenue Sales Act, 1868 (Ben. Act VII of 1868).

5 . Any money due from sureties of a farmer in respect of the revenue of the estate farmed by him.

6 . Any money awarded as fees of costs by a Revenue authority under any law or any rule having the force of law.

7. Any demand payable to the Collector by a person holding any interest in land, pasturage, forest-rights, fisheries or the like, whether such interest is or is not transferable, when such demand is a condition of the use and enjoyment of such land, pasturage, forest-rights, fisheries or other things.

xxxxx

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.

Explanation : This item shall not apply to any money or demand specified in items 3, 4 and 7."

8. To my mind the key to the interpretative exercise here is first the question of the true approach to the Act and Schedule 1 thereto rather than any finical legalistic plea on the individual words of Article 7 of the said schedule. In sum, the question is whether all the articles in the schedule are to be broadly and liberally construed as provisions intended for the recovery of what are patently public demands or are to be strictly and narrowly constructed to hyper-technically exclude therefrom what otherwise would appear squarely to be within their ambit. This exercise inevitably entails a look at the history of the Act, its basic purpose and the larger scheme of its provision and in particular of Schedule I thereto.

8A. The State or the public exchequer has always stood on a pedestal higher than and different from the private individual's demands for recovery of his debts. From times immemorial the State Exchequer has reserved to itself the special and peculiar procedure for the recovery of certain dues and debts owing to itself. Whilst the individual citizen resorts to the Civil Courts for debts due to him, in the case of State the public exchequer cannot, by the very nature of things, resort to the ordinary civil process for the recovery of all sums due to it. Necessarily a special procedure for enforcing its own demands is resorted to by the State in the interest of public exchequer because it would be impossible to carry on the business of government if its revenues were all to be referable to regular litigation in Civil Courts. There, thus, arises a concept of public demands in the nature of land revenue, rents, taxes, fines and other dues, in respect of which the primal need is a special summary procedure for their recovery where they are not paid or denied. Perhaps the classic example in this context is that of land revenue which is a special feature in India and the modes of its recovery and realisation historically go back to the earliest time. For our purposes it is wholly unnecessary to delve too far down in history and it suffices to notice that under early British rule the customary modes of demand and coercion for the recovery of land revenue both before and subsequent to the permanent settlement were resorted to. One of the earliest statutes in this context is Regulation III of 1774 in the province of Bengal followed by Regulation I of 1801 and Regulation V of 1812. Later public demands other than land revenue also came within the ambit of the special mode for their recovery. Act VII of 1868 for first time codified provisions relating to the procedure for the recovery of State demands other than land revenue proper. It was followed by a series of other statutes ultimately culminating in Bengal Act I of 1895 which was the predecessor statute to the Bengal Public Demands Recovery Act, 1913 (Act III of 1913). This perhaps continued to apply within this jurisdiction till the creation of the separate province of Bihar and Orissa and till the present Bihar and Orissa Public Demands Recovery Act, 1914 was notified in the gazette on the 7th Oct, 1914. The Act is in part in pari materia with its predecessor statute. Plainly enough it is a pre-Constitution legislation which in essence has held the field for 72 years now and, as noticed, is only a successor of much older provisions applicable to the erstwhile province of Bengal. Schedule I to the Act is an integral part of the statute framed with particular reference to Section 3(6) of the Act. The existing articles (barring Articles 9A and 15) were an integral part of the statute even when originally enacted.

9. Now, the articles in Schedule 1 have to be viewed in the context of the 'fact that the phrase "public demands" is intrinsically one of the widest amplitude. It is against this background that one has to construe the aforequoted definition given in Section 3(6) of the Act. This definition is by direct reference to Schedule I. The said schedule then has its heading as "Public Demands" and at the same time makes express reference to Section 3(6). It is thus manifest that Section 3(6) and Schedule I are one integral whole which has to be construed as part and parcel of each other. But what perhaps calls for particular notice in this context is that under the Act the definition and concept of public demand becomes one of the widest amplitude. Even in its ordinary common parlance and dictionary meaning, a public demand is a wide ranging concept. However, this has been further and deliberately expanded by the legislature to include within its sweep any arrear or any money which may come to be mentioned or even referred to in Schedule 1 and include also any interest which may be chargeable thereon. Yet again it deserves highlighting that Section 3(6) of the Act is not merely an inclusive definition but expressly says that the public demand means whatever may be specified in Schedule 1. In the result even the broad sweep of public demand is further extended by the statute herein and, in my view,

designedly so. In logical essence, this leads to the result that for the purposes of this Act a public demand includes all arrears of revenue or any money due or demand payable which finds place in Schedule I even by reference. It seems patent that the legislature has deliberately not attempted to define public demand or limiting the same. All the arrears of revenue, money or payable demands which the legislature chooses to incorporate in Schedule I become by virtue of the definition" under Section 3(6) a public demand of which recovery can be made under the Act. The scheme of the definition under Section 3(6) of the Act and the frame of the articles of the schedule complementary thereto thus become a key to the interpretation of these provisions.

10. Now it needs no great erudition to hold from the 69 sections of the Act that the same is a statute for the special purpose of the recovery of public demands and prescribes a special procedure therefor. In looking at the public demands enumerated in Schedule I one cannot equally lose sight of the articles preceding and succeeding Article 7 which particularly falls for consideration. Articles 1, 2 and 3 deal with arrears of revenue and bring within their sweep any such arrear which becomes due under the provisions of the statute enumerated therein or which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land revenue. Yet again Articles 4, 5 and 6 pertain to any money which may come within the ambit of a public demand as specified therein and include even any money due from the sureties of a farmer in respect of the revenue of the estate farmed by him as also any money awarded as fee or cost by a revenue authority. Article 7 then deals with any demand payable to the Collector and inevitably falls for detailed consideration later. Particular reference is called for the Article 9 which in sharp contrast to Article 7 talks in express terms of a written instrument by which a person has agreed to pay any money payable to a servant of the government or local authority as a public demand. Articles 8 and 10 to 15 with particular detail make provision for recovery of the other different classes of demands of money or rent due to the State or public authorities and to cooperative societies. By virtue of the added Article 15 (inserted by Act 4 of 1974) the money payable to the State Bank or nationalised banks or companies and corporations and equally to the Bihar State Electricity Board has also been brought within the ambit of public demands. It is in this mosaic that Article 7 is to be construed and there seems to be little doubt that the provisions thereof must be given a broad and liberal construction and nothing which can come reasonably within its wide sweep is to be excluded from it by confining it to a procrustean bed of legalism.

11. To my mind, the crucial and the wide ranging words in Article 7 deliberately employed are "ny interest". The word 'interest' by itself has a broad sweep. Its relevant dictionary meaning in Chambers 20th Century Dictionary is--

> "claim to participate or be concerned in some way; stake, share, behalf; a right to some advantage; the body of persons whose advantage is bound up in anything;".

In the New Oxford Illustrated Dictionary, the relevant meaning of the word 'interest' is-

> "Thing in which one is concerned, principle in which a party is concerned; party having a common interest; pecuniary stake."

The learned Advocate-General had rightly and forcefully contended that the word

'interest' employed in Article 7 is to be given its broad dictionary meanings aforesaid. He contended plausibly and, in my view, rightly that the inherent fallacy which underlies the stand taken on behalf of the petitioner is in construing the plain word 'interest' as if it is the legal term of art connoted by the phrase "right, title and interest" and thereafter equating it therewith. Imbued as we are by legal phraseology, one tends sub-consciously to give a technical legal meaning to an otherwise word of common parlance. The learned Advocate-General rightly highlighted that it is not well warranted to read the word 'interest' when the legislature has deliberately prefixed it with the word 'any' as well in the legalistic sense of a right, title or interest in immovable property. The two concepts are distinct and separate. They are not synonyms and it is uncalled for to read them so. Equally fallacious it is to first read the words "any interest" as a right, title and interest in land and then to import the requirement of the Transfer of Property Act and the Registration Act. It was correctly pinpointed that the legislature iswell aware of the legal term of art -- "right, title and interest."

In Article 7 the words "any interest" and "such interest" have been employed twice and the; legislature has advisedly refused to use the well known phrase "right, title and interest" in either context. On the contrary, it has widened the already large sweep of the word 'interest' by prefixing the word 'any' thereto. Therefore, to read "any interest" as a right, title and interest in land is nothing but doing violence to both the language in Article 7 and the intent of the legislature in employing the same.

12. This obsession with the phrase "right, title and interest" as a term of art despite the employment of the words "any interest", in ARTICLE 7 perhaps calls for a further elaboration, A person may have a firm legal licence to come upon the land. Obviously this would not give him any title in the land as such. Yet could it possibly be said that he has no interest therein despite an established licence to come over it? The answer must obviously be no. Similarly a person may not have strictly a legal right as such in the land because of legal infirmities and technical defects like the absence of a formal executed deed and its requisite registration and the infirmity of the contract being not drawn up in the form as prescribed in Article 299 where it may be applicable. Nevertheless a person may have the deepest interest in the said land despite the absence of a legally enforceable right thereto. Another example may be taken of adverse possession in which the prescriptive period of full twelve years may not have as yet passed. Though the person may not thus have acquired a legal title thereto, nevertheless he would have a clear interest in the land by virtue of his long adverse possession. A strict legal right or title is one thing and a mere interest is another. As has been said earlier, the word 'interest' is in itself wide enough but "any interest is at its widest and one finds no reason to constrict, confine and restrict it. Indeed everything points to a broader and liberal interpretation thereof. Taking the concrete example in the present case, the learned Advocate-General highlighted that herein it is common ground that the petitioner had deposited security money, had participated in the open auction and the bid was knocked down in his favour. It was even pinpointed that thereafter he claimed to have deposited one half of the bid money and it is common ground that a bid sheet was duly prepared and issued in his favour. The firm concurrent finding of fact by the Certificate Officer and the Appellate Collector is that the petitioner was put in possession of the Hat and had actually exercised that right continuously for well-nigh nine months by making the collection of tolls thereat. In this context would it possibly be said that he did not hold any interest in the Hat and was not liable to the Collector for the bid amount which was a condition of the use and enjoyment of such a Hat? The answer seems to be too plain to call for further elaboration.

13. This matter then deserves examination from another refreshing angle. The contention of the learned counsel for the petitioner that no interest whatsoever in the land can be created except by a duly executed and registered deed, is itself utterly untenable. Undoubtedly, a lease for land creates an impeccable interest in the said land. It is unnecessary to quote the well known provisions of Section 105 of the Transfer of Property Act defining a lease of the immovable property. The manner of making a lease is provided for in Section 107. The relevant parts thereof are as under;

> "107. Lease how made.-- A lease of immovable property from year to year, or for any term exceeding one year, of reserving a yearly rent, can be made only by a registered instrument.
>
> All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. It appears from the above that a lease of immovable property for one year or less can be made by even an oral agreement accompanied by delivery of possession. There is no gainsaying the fact that a lease of any immovable property creates not only an interest but indeed a legal interest as well. Therefore, plainly enough, an interest in land can well exist and be created by agreement and delivery of possession alone. Even if the matter has to be narrowly confined, the settlement of a Hat in favour of a person for a year by delivery of possession is legally feasible and would thus clearly create an interest therein. Equally an unregistered document or other evidence of agreement added to delivery of possession creates a subsisting interest. There is no manner of doubt here that on the concurrent findings of fact the petitioner was put in possession and in fact had made collections of toll for the Hat. Clearly enough he, therefore, had an interest in the Hat. The question therefore arises that if an interest in the Hat or land could be created for a year or less, does such interest evaporate totally in thin air if it is for a period of a day or two more than one year? True enough, a legal enforceable title or right may fall because of the absence of the legal requirements. But to my mind, it cannot be possibly said that in such a situation the holder ceases to have any interest in the Hat or similar rights.

14. Here a distinction between a lease and a profits a prendre may also be noticed. This has been authoritatively spelt out in the following words of Vivian Bose, J., in Smt. Shantabai v. State of Bombay, MANU/SC/0023/1958 : AIR 1958 SC 532:--

> "In a lease, one enjoys the property but has , no right to take it away. In a profits a prendre one has a licence to enter on the land, not for the purpose of enjoying it, but for removing something from it, namely, a part of the produce of the soil."

It is plain from the above that a profits a prendre is somewhat lower than a lease of an immovable property. Therefore, if a lease, which is a much more substantive interest in land can exist by oral agreement and delivery for period of a year or less, plainly enough profits a prendre for a year or less can doubly be so created by agreement and delivery. Even a legal interest for a year or less either by way of a lease or profits a prendre in land can well be created without the requirement of a formally executed deed and registration thereof. To contend in abstract, that no interest in land whatsoever can be created without the aforesaid formalities is itself plainly untenable.

15. Now, apart from the provisions of the Transfer of Property Act, the larger aspect is that Article 7 of the Schedule is not to be myopically construed in isolation but in the larger mosaic of the other articles in which it stands entirely embedded. The learned Advocate General rightly drew our attention to the widely couched language employed in this article and even the more so in the preceding Articles 1 to 3. It was pointed out that the wide sweep of these Articles covers any arrear of revenue or land revenue and anything which in law is realizable as such. Similarly, any money which is due to the designated authorities in Articles 3 to 6 is within the ambit of recovery as a public demand. The broader prospect herein is a special and quicker procedure for the recovery of public dues. With this background, the learned Advocate-General first pinned himself on the opening part of the article to highlight that the core of the matter here is any demand payable to the Collector. The width of the language is patent and calls for no elaboration. He then related it to the latter part of article which provides that such a demand must be a condition to the use and enjoyment of such land, pasturage, forest-rights, fisheries and other things. Reading together, it was pinpointed that where monies are payable to the Collector as a demand which is a precondition for the use and enjoyment of the land, it would broadly come within the sweep of Article 7. Yet again, the person liable must be holding any interest therein which does illustrate the wide-ranging nature thereof. Particularising the thing, the counsel pointed out that the payment of the bid money for the Hat was a condition for the use and enjoyment of such land and was payable to the Collector by the petitioner who undoubtedly held an interest therein. To constrict the import of Article 7, despite its special purpose and its wide ranging language and the context in which it is laid, appears to me as wholly untenable.

16. In this context, in my view, a reference to the succeeding Article 9 is somewhat instructive by way of analogy. It is pointed noticeably that while Article 9 talks of a written instrument, in Article 7 any such reference or requirement is conspicuous by its absence. Therefore, wherever a written instrument is itself executed agreeing to the recovery of a public demand, it would come squarely within Article 9. The explanation to this Article excludes its applicability to demands specified in Articles 3, 4 and 7. Consequently even in the conspicuous absence of any such requirement, to read the necessity of a duly executed registered document for the applicability of Article 7 appears to me as some what incongruous and contrary to known canons of construction.

17. Lastly, it deserves highlighting that it is an error to first read Article 7 as confined to holding any interest in land alone and then to invoke all the strictest provisions of the Transfer of Property Act and the Registration Act therefor. Plainly enough the phrase "any interest in land, pasturage, forest-rights, fisheries or the like" has to be construed as a whole and not confined to its opening part as any interest in land alone. Article 7 is expressly mandated to cover any interest in pasturage, forest-rights, fisheries or the like as well apart from land stricto sensu. However what appears to be a clue to the interpretation and indicative of the width of the provision of the words "or the like" is advisedly inserted by the legislature herein and coupled with "other things" at the end of the article. Plainly enough the enumeration herein is not exhaustive but merely illustrative. It names four things as an illustration and the rest are left wide open by the phrase "or the like". This leaves room for the widest play of similarities. But even if it be read restrictively as ejusdem generis, it would qualify each of the four categories and not land alone. The ejusdem generis rule would be equally applicable to things akin to pasturage, forest-rights and fisheries as well. Would a Hat, Bazar or Mela be ejusdem generis to the aforesaid enumeration? To my mind, it plainly is. If the legislature had chosen to frame this article as any

interest in land, pasturage, forest-rights, fisheries, Hat, Bazar or Mela, there would not be the least incongruity in it -- rather a total consistency therein; Reference in this context is called to Section 4 of the Bihar Land Reforms Act wherein all the categories are enumerated in terms. Plainly enough, the legislature is not compelled to visualise and enumerate all conceivable demands payable to the Collector pertaining to such like interests and, therefore, have categorised the four, and the rest is covered by the words "or the like". The words "or the like" have necessarily to be given the width in which the legislature clearly intended. It is sound rule of construction that no words of statute are to be construed as redundant or otiose. To pin down Article 7 as merely confined to interest in land alone is thus, to my mind a basic error. Equally erroneous it is to read the words "or the like" as qualifying the last word 'fisheries' alone. It does not. These words precisely categorise the four things and are indicative of any thing broadly similar thereto.

18. What has been said above is then buttressed by the concluding words of the article. The legislature's intention to put it widely is manifested by the words "enjoyment of such land, pasturage, forest-rights, fisheries or other things". It is significant that here the legislature has not even used the words "or the like" but still a wider phraseology "or other things". To read and confine a provision so widely couched as Article 7 into one as pedantical constricted to interest in land is, in my view, doing violence to the wide-ranging provision of this Article and equally to the patent intent of the legislature.

19. Here inevitably adverting to precedent, it is well to recall that on settled canons of construction an interpretation of a statute which leads to anomalous or mischievous results is to be avoided. If the stand taken on behalf of the petitioner is to be accepted then the necessary result is that even though the petitioner was put in possession and has collected the tolls for full nine months on the authority of bid sheet and a contingent settlement in his favour, yet no recovery can be made by the Collector from him, on the admitted ground that no formal registered deed was executed betwixt the parties. Any suit by the collector to recover the amount must also necessarily fail for identical reasons. The end result is that the petitioner would be legally entitled to defalcate the amounts of tolls which have been found to have been collected by him. The construction advocated on behalf of the petitioner would lead to the result that if the settlee of a Hat, Bazar and Mela can delay and later decline execution of a registered deed, then despite the collection of tolls by him, the Collector cannot recover the same either under the Act or by way of a suit. A construction that would lead to such an anomalous and, if I may say so, mischievous result is not to be easily adhered to. Indeed it was pointed out on behalf of the respondent State that this is the usual result ensuing from the view taken in ILR (1958) Pat 302 (supra).

20. Now before adverting to precedent a strong note of caution, however, must be sounded. Whatever has been said above is in the narrow context of the question whether the demand by the Collector is recoverable as a public demand under Article 7. The sole question is whether by virtue of the special nature of the Act; the peculiarities of the law for recovery of the State revenue and public demands; and the nature and content of Schedule 1 to the Act and Article 7 in particular; warrant a recovery by its special procedure. 1 his aspect has little, if not nothing, to do with the actuality and the enforceability of a contractual right in a Court of law. As has been noticed above, if the Collector in a situation of this kind were to sue in a Court of law, he would have little or no chance of success. Similarly, it is plain that an actual or a contingent settlee of a Hat would have no enforceable right in a Court of law

unless the requisite formalities of such a contract are first established. Learned counsel for the petitioner's argument or assumption that unless it can be decreed in a Court of law on the basis of an enforceable contract a public demand cannot be recovered under Article 7 seems to me as wholly unwarranted. It can be said with confidence that though the contractual liability for reasons of defect like the absence of a contract, or lack of formal execution or registration or non-conformity with Article 299 of the Constitution may bring in an impassable hurdle in the enforcement of a contract in a Court of law, the same would nevertheless be recoverable if it comes fairly and squarely within the ambit of any one of the fifteen articles of Schedule I to the Act by virtue of their own pristine force. To put it tersely, recoverability of a public demand under the Act is one thing, whilst the enforceability of a contract in a Court of law is entirely another.

21. Coming now to precedent learned counsel for the petitioner's reliance on MANU/SC/0018/1955 : AIR 1956 SC 17, (Anand Behera v. State of Orissa) is of no assistance to him. This pertained to the oral sale of fishery right by the then Raja in relation to the Chilka Lake in Orissa. Their Lordships of the Supreme Court merely held that on the abolition of the zamindari right it had vested in the State and the oral sale of fishery rights confers no legal or fundamental rights upon the petitioners to maintain a writ petition under Article 32 of the Constitution before the Supreme Court. There is not and, indeed, cannot be, any dispute with the settled proposition that fishery rights are a profits a prendre arising out of land and as such immovable property. A somewhat similar view with regard to the licence and the right to cut trees in the forest again fell for consideration before their Lordships in Smt. Shantabai v. State of Bombay, MANU/SC/0023/1958 : AIR 1958 SC 532. Therein also it was held that unregistered documents granting the petitioner a right to cut trees in forest land and the subsequent stoppage from doing so on the vesting of the forest in the State gave rise to no infraction of fundamental right which could possibly be enforced under Article 32 before the final Court. Both these cases cannot in any way advance the case of the petitioner because no issue whatsoever of the maintainability of the writ petition or the infraction of any fundamental or legal rights arises herein. Yet again the reliance by the learned counsel for the petitioner on the Full Bench judgment in Chetlal Sao v. The State of Bihar 1986 BBCJ (HC) 109 : (MANU/BH/0047/1986 : AIR 1986 Pat 267) is equally misconceived. The issues therein were meticulously formulated and precisely answered and the question before us was not even remotely before the Full Bench in that case. What was held therein was that a writ of mandamus would not be maintainable in the absence of a concluded registered contract for the lease of fishery rights. No such issue arises herein at all and no aid can be derived from the ratio of the said judgment.

21-A. One may now come to the sheet anchor of the petitioner's case in S.A. Mannan v. State of Bihar ILR (1958) Pat 302. A perusal of the said judgment would indicate that in the brief paragraph dealing with the matter in the short judgment the issue was hardly adequately debated upon. Learned counsel for the parties seem to have been somewhat remiss in not presenting the matter in all its various facets. The larger purpose and the scheme of the Bihar and Orissa Public Demands Recovery Act; its legislative history; the width of the definition of "public demands"; the amplitude of the various articles in Schedule 1 thereto; and the context in which particularly Article 7 has been set; and equally the fact that an interest in land may be created by a lease for one year or less even by an oral agreement coupled with delivery; all seem to have singularly missed consideration. Indeed a perusal of the few lines in the judgment in this context would indicate that no independent opinion seems to have been formed and expressed by the Bench but it purported to have followed the

earlier decision in Surendra Narain Singh v. Bhai Lal Singh ILR (1895) Cal 752. That was a case of an inter se dispute between the co-sharers of a Hat in a verbal agreement claiming rent therefore from the allegedly defaulting co-sharer. Admittedly in that case the lease was for more than one year and consequently no verbal agreement therefore was allowed to be proved and there is no discussion whatsoever of the issue arising herein in the said judgment and indeed the primal question turned on whether in the second appeal the plaintiff in the alternative could convert a suit of one character into a suit of another of inconsistent nature. Plainly enough that judgment can hardly be of any relevance to the issue of recoveries as a public demand under Article 7 of Schedule I. Similarly, with respect, reliance on Golam Mohiuddin Hossain v. Parbati ILR (1909) Cal 665 holding that rents and profits derivable from a Hat can be validly mortgaged, can possibly be of no aid for the solution of the question. The very question at issue seems to have been begged by observing that because there was not an enforceable concluded contract duly registered between the parties, it would follow that no recovery under Article 7 of Schedule 1 could be made. With the deepest deference to the learned Judges and in the light of the exhaustive discussion earlier, I am constrained to hold that the said judgment does not lay down the law correctly and has, consequently, to be overruled.

22. Once the judgment in S.A. Mannan's case (ILR (1958) Pat 302) (supra) was rendered, it seems, it was not thereafter questioned and was routinely followed by single Benches and Division Benches thereafter. This was so done also in Shri Prabhunath Singh v. State of Bihar, 1980 BBCJ (HC) 344. Indeed one of the learned Judges of the Division Bench, S. Narain, J., contented himself by observing that it was conceded by the learned advocate for the State that the case is covered by the ratio of the decision in S.A. Mannan v. State of Bihar (ILR (1958) Pat 302) (supra). My learned brother, N.P. Singh, J., with some elaboration rightly observed as under : --

> "The grant of right to collect tolls from a hat, in my view, stands on a different footing than grant of a right to catch fish or to cut standing timber trees which were held in the aforesaid cases to amount to an interest in land."

However, he preferred to follow the earlier decision in S.A. Mannan v. State of Bihar. With the deepest respect and for identical reason a fortiori it has to be held that this judgment and also all other cases following or taking the identical view with S.A. Mannan's case are not good law.

23. To finally conclude, the answer to the question posed at the very outset is rendered in the affirmative . It is held that Article 7 of the Schedule I to the Act entitles the Collator to recover as a public demand the agreed settlement amount from a settlee of a Hat even in the absence of a duly executed registered lease deed.

24. Once it is held as above, necessarily the writ petition must fail. It is not in serious dispute that on the Anchal Adhikan's direction the Circle Inspector, after holding a full inquiry, held that the petitioner had collected the tolls from the Khizersarai Bazar ever since 1st of April, 1977. The Certificate Officer, after full consideration, rejected the petitioner's objection and came to the firm conclusion that the collection of tolls had in fact been made by the petitioner. The appellate authority, on an independent consideration, came to the identical conclusion. No serious challenge to these concurrent findings could have been laid in the writ

jurisdiction and was, in fact, not so laid by the learned counsel for the petitioner. The writ petition has thus no merit and is hereby dismissed. In view of the legal intricacy and the earlier existing precedent, I would leave the parties to bear their own costs.

N.P. Singh, J.

25. I agree.

S.S. Hasan, J.

26. I agree.

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