

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2927 of 2015

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Md. Sahabbudin S/o Md. chanu Mian resident of Village;- Badahpur P.S: Mofassil
, Distt- Gaya

.... Petitioner

Versus

1. The State of Bihar Through The Chief Secretary Govt. of Bihar, Bihar, Patna.
2. The Principal Secretary, Mines and Geology Department, Govt. of Bihar, Patna.
3. The Commissioner, Mines and Geology Department , Govt. of Bihar, Patna.
4. The Commissioner Magadh Division , Gaya.
5. The District Magistrate , Gaya
6. The Superintendent of Police, Gaya
7. The Certificate Officer, Mines & Geology Magadh Circle , Gaya

.... Respondents

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Appearance :

For the Petitioner : Mr. Vinod Kumar, Advocate

For the Respondents : Mr. Rakesh Ambastja., AC to AAG 15

Mr.Rajendra Prasad, Special P.P.(Mines)

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 23-02-2015

I have heard learned counsel for the petitioner, the State and
the Special P.P.(Mines).

Petitioner seeks quashing of the entire certificate proceeding in
Certificate Case No. 24/2013-14 pending before the Assistant
Director, Mines and Geology Department, Gaya and also for quashing
of all the consequential orders passed in Certificate Case No. 24/2013-
14 by which Warrant of Arrest and Warrant of Attachment have been
issued against the petitioner for non-payment of the certificate amount
arising out of Requisition No. 25/2013-14.

Petitioner claims that he was never running a brick kiln and,

thus, the respondents are not entitled to recover any amount from him. Learned counsel further submits that everything is being done for recovery of Rs. 96,000/- under the provisions of section 7 of the Bihar and Orissa Public Demands Recovery Act (hereinafter to be referred to as “the Act”) from the petitioner without following the procedure and service of notice upon him.

Learned counsel for the petitioner places reliance upon a decision of a Coordinate Bench of this Court dated 27.03.2012 passed in **C.W.J.C. No. 21186 of 2011(Rakesh Kumar alias Rakesh Sharma v. The State of Bihar and others)** which has been appended as Annexure 4 in which similar issue has been considered.

In my considered opinion, whether the petitioner was running a brick kiln, whether the amount was due against him and whether the due amount was to be recovered from him or not is a question to be decided in a Certificate Case after giving him due opportunity of hearing and such issue cannot be directly considered in this writ application.

However, since the petitioner claims that notice under section 7 of the Act was never served upon him, this Court would be in agreement with the views expressed by a learned Single Judge of this Court in **Rakesh Kumar alias Rakesh Sharma(supra)** that, in such a situation, one opportunity should be given to him for filing objection

under section 9 of the Act.

Having regards to the facts and circumstances, this writ application is being disposed of with a direction to the petitioner to file his objection under section 9 of the Act within two weeks from today which shall be considered and disposed of on its own merit and in accordance with law by the Certificate Officer concerned.

In the meantime, the Warrant of Arrest and the Warrant of Attachment against the petitioner, a copy of which has been appended as Annexure 2, are quashed and set aside.

However, it is made clear that it shall be open to the Certificate Officer to again issue Warrant of Arrest and Warrant of Attachment after disposal of the objection of the petitioner in accordance with law if such situation arises.

(Dr. Ravi Ranjan, J)

SC/-

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