

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2924 of 2015

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1. Chunnu Singh s/o Bharat Singh resident of village :- Suhani Bigha, P.S; Hulasganj, Dist- Jehanabad.
 2. Kamla Singh S/o chandradeo Sharma
 3. Satyendra Singh S/o Baleshwar sharma both 2 & 3 resident of village Tajpur, P.s.- khijersarai District- Gaya.

.... Petitioners

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 Commission, Mines & 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 Area Gaya.

.... Respondents

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Appearance :

For the Petitioners : Mr. Vinod Kumar, Advocate
For the Respondents : Mr. D.K. SINHA, AAG 2
Mr. Sudhir Kumar, AC to AAG 2
Mr. Rajendra Prasad, Special P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 23-02-2015

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

Petitioners seek quashing of the entire certificate proceeding in Certificate Case No. 23/2009-10 pending before the Assistant Director, Mines and Geology Department, Gaya and also for quashing of all the consequential orders passed in Certificate Case No. 23/2009-10 by which Warrant of Arrest and Warrant of Attachment have been issued against the petitioners for non-payment of the certificate

amount arising out of Requisition No. 37/2006-07.

Petitioners claim that they were never running a brick kiln in the name and style of M/s Bala Jee Marka Bricks, and, thus, the respondents are not entitled to recover any amount from them. Learned counsel further submits that everything is being done for recovery of Rs. 81,760/- 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 petitioners without following the procedure and service of notice upon them.

Learned counsel for the petitioners 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 petitioners were running a brick kiln, whether the amount was due against them and whether the due amount was to be recovered from them or not is a question to be decided in a Certificate Case after giving them due opportunity of hearing and such issue cannot be directly considered in this writ application.

However, since the petitioners claim that notices under section 7 of the Act were never served upon them, 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 them 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 petitioners to file their 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 petitioners, a copy of which has been appended as Annexure 3, 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 petitioners in accordance with law if such situation arises.

(Dr. Ravi Ranjan, J)

SC/-

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