

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7040 of 2015

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Jai Sharma @ Jai Singh S/o Ramcharitra Sharma Resident of Village Bira, P.S. Hulasganj, District Jehanabad.

.... Petitioner

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

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Vinod Kumar, Advocate
For the State	:	Mr. R.R.K.Pandey, SC 29 and Mr. Sudhir Kumar, AC to AAG II
For the Respondent	:	M/s D.K.Sinha, Sr. Advocate and Mines Department Rajendra Prasad, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 22-05-2015

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. 27/2009-10 pending before the Certificate Officer, Mines and Geology, Magadh Circle, Gaya and also for quashing of all the consequential orders passed in aforesaid Certificate Case by which Warrant has been issued against the petitioner for non-payment of the certificate amount arising out of Requisition No. 41/2006-07.

Learned counsel submits that everything is being done for recovery of Rs. 94,151/- 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 this Court rendered in **C.W.J.C. No. 2924 of 2015 (Chunnu Singh & ors v. The State of Bihar and others)** which has been appended as Annexure 3 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, and this Court has already held in **Chunnu Singh & ors(supra)** having been in agreement with the views expressed by a learned Single Judge of this Court in **C.W.J.C. No. 21186 of 2011(Rakesh Kumar alias Rakesh Sharma v. The State of Bihar and others)** that, in such a situation, one opportunity should be given to him for filing objection under

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

Accordingly, the Distress Warrant/Warrant of Arrest against the petitioner, a copy of which has been appended as Annexure 2, is quashed and set aside.

However, it is made clear that it shall be open to the Certificate Officer to proceed in accordance with his decision rendered after consideration of objection filed by the petitioner.

(Dr. Ravi Ranjan, J)

Spd/-

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