

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.151 of 2015

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Jawahar Lal son of Jagdish Lal r/o Village+P.O. Khudun P.S, Kochas District Rohtas. At present mohalla Dahiyawan, Brahman Toli, P.S. Chapra Town District Saran at Chapra.

.... Petitioner/s

Versus

- 1.The State of Bihar.
- 2.The District Certificate Officer, Saran at Chapra.
- 3.The Additional Collector, cum Certificate Officer, Saran at Chapra.
- 4.The District Transport Officer cum District Certificate Officer, Saran at Chapra.
- 5.The District Manager, Bihar State Food Corporation Saran at Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Ban Bihari Singh, Adv
For the Respondent/s : Mr. GP3- Santosh Kumar Jha
For the B.S.F.C : Mr. Shailendra Kumar Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 19-01-2015 Heard learned counsel for the parties as with regard to the following reliefs prayed in this writ application:-

“For issuance of an appropriate writ, order or direction particularly in the nature of writ of certiorari for quashing the entire certificate proceeding initiated against the petitioner in connection with Certificate Case No. 5/14-15 for recovery of a sum amounting to Rs. 8881810/-.

For quashing the show cause notice issued U/s 7 dated 20.2.14 of the Act and the order of attachment of Property dated 16.10.2014 and show cause notice dated 16.10.2014.”

Learned counsel for the petitioner submits that the Certificate Officer in fact has passed the impugned order



as with regard to attachment even without ensuring service of notice under Section-7 of Bihar Public Demand Recovery Act (hereinafter referred to as the Act) upon the petitioner. In this regard, he has referred to the orders dated 04.10.2014, 16.10.2014 and 16.11.2014, and has tried to show that as a matter of fact the Certificate Officer was not even satisfied with service of notice under Section-7 of the Act.

Learned counsel for the respondents is not in a position to controvert the aforementioned fact as is also clearly borne out from the ordersheet.

In the considered opinion of this Court, the Certificate Officer was wholly unjustified to pass such order for attachment of the property of the petitioner. It has to be kept in mind that the certificate proceeding got initiated by order dated 20.02.2014 fixing the date of 07.03.2014 and thereafter on 07.03.2014, the Certificate Officer had passed another order for issuance of fresh notice and the case was directed to be placed on



30.07.2014, but there is nothing on record to show as to why the certificate case was not taken on 30.07.2014. Subsequently when the case was transferred to another certificate officer. The Certificate Officer on 04.10.2014 had recorded that service report of notice sent under Section-7 of the Act should be awaited but on 16.10.2014, the Certificate Officer even without being sure of the service of notice u/s 7 of the Act had gone to pass the impugned order holding that since time for filing of the objection was already over steps for attachment should be taken.

It thus, becomes, clear that on 16.10.2014, the Certificate Officer even without ensuring the service of notice on the petitioner under Section 7 of the Act had gone to pass the impugned order of attachment. That however cannot be the way in which the certificate proceeding has to be conducted and decided by the Certificate Officer. Service of notice under Section-7 of the Act is a condition precedent for proceeding further in

the certificate proceeding.

Here, in this case in absence of any proof of service of notice under Section-7 of the Act on the petitioner, this Court will have no difficulty in holding that the orders dated 16.10.2014 and 16.11.2014 were wholly bad and also without jurisdiction. The impugned order dated 16.10.2014, is accordingly, set aside and the matter is remitted back to the Certificate Officer.

The petitioner must appear before the Certificate Officer within a period of four weeks from today and file his objection under Section-9 of the Act within two weeks of his appearance before the Certificate Officer. Copy of such objection filed by the petitioner shall be made available to the representative of the respondent- Bihar State Food and Civil Supplies Corporation who thereafter will file his reply to the objection raised by the petitioner within a period of four weeks from the date of service of the copy of objection under Section-9 of the Act, whereafter the Certificate Officer will extend

opportunity of hearing to both to the petitioner and the representative of the Bihar State Food and Civil Supplies Corporation and thereafter the Certificate Officer would pass his order under Section-10 of the Act. In case, the petitioner fails to deposit the amount so determined by the Certificate Officer in his order under Section-10 of the Act, if any, it would be open for the Certificate Officer to take coercive measure against the petitioner for realization of the certificate dues in accordance with law.

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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