

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10794 of 2016

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Pankaj Kumar son of Sri Upendra Narayan Singh, resident of village-
Koriama, Police Station- Masaurhi ,District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. District Magistrate, Patna
3. Certificate officer Cum Deputy Director Mines, Patna Circle, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Raj Shekhar

For the Respondent/s : Mr.Arvind Kumar No. 2- SC-17

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT

Date : 11-11-2024

1.The Writ petition is filed challenging the order dated 09.01.2016 passed by the respondent No. 3/Certificate Officer (Mines), Patna Circle, Patna in Certificate Case No. 40/2007-08, whereby the warrant of arrest was issued against the petitioner. Further, to quash the entire proceedings of the Certificate case pending before the respondent No. 3/Certificate Officer (Mines) Patna Circle, Patna.

2.The brief facts culled out of the petition are that the petitioner was involved in brick manufacturing



business in partnership with one Sundar Sharan Sinha and later he came out of the partnership firm, in the presence of *Panch* witnesses on 08.09.2005. In the agreement it was agreed between the parties that Sundar Sharan Sinha alone will be liable for any debts. In the month of March, 2016, the petitioner learnt that the police were searching for him. On that the petitioner applied for certified copies of the order passed by respondent No. 3, in Certificate Case No. 41/2007-08 dated 17.12.2007. Therefore, petitioner preferred the Writ petition challenging the Warrant of arrest dated 09.01.2016 issued against the petitioner.

3. It is the specific contention of the Learned counsel for the petitioner that the petitioner has not received any notice under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 and further, Warrant of arrest was issued against him, under Section 17 of the Bihar and Orissa Public Demand Recovery Act, 1914. It is further contended that there are two Certificate cases issued against the petitioner under Certificate Case



No. 40/2007-08 and Certificate Case No. 41/2007-08, for recovery of an amount of Rs. 67,275/-. Therefore, the petitioner prayed to quash the proceedings in Certificate Case No. 40/2007-08 as well as the Warrant of arrest dated 09.01.2016 issued under Section 17 of the Bihar and Orissa Public Demand Recovery Act, 1914.

4. A detailed counter affidavit was filed by the respondent No. 3 i.e. the Certificate Officer which disclose that Certificate Case No. 40/2007-08 filed against the petitioner was stayed in compliance of the order dated 14.07.2016 passed by this Court, and there is only one certificate case against the petitioner and that Certificate Case No. 41/2007-08 is only a requisition for recovery of amount of Rs. 67,275/- along with Warrant of arrest dated 09.01.2016. It is further contended in the counter affidavit that the petitioner received notice under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 and in spite of it, petitioner did not appear before the Certificate Officer, for which the Certificate Officer was constrained to issue Warrant of arrest. Therefore



contended that there is no irregularity or illegality in issuing Warrant of arrest.

5. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents. Perused the record.

6. Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 envisaged that *when a certificate has been filled in the office of a certificate officer under section 4 or section 6, the Certificate Officer shall cause to be served upon the certificate-debtor, in the prescribed manner, a notice in the prescribed manner; a notice in the prescribed form and a copy of the certificate.*

7. Record reveals that the petitioner received the said notice, though, he contends that he did not receive any such notice.

8. Section 8 of the Bihar and Orissa Public Demand Recovery Act, 1914 reads as follows:-



Effect of service of notice of certificate.-From and after the service of notice of any certificate under section 7 upon a certificate-debtor-

(a) any private transfer or delivery of any of his immovable property situated in the district or, in the case of a Revenue paying Estate, borne on the revenue roll of the district in which the certificate is filed or of any interest in any such property shall be void against any claim enforceable in execution of the certificate; and

(b) the amount due from time to time in respect of the certificate shall be a charge upon such property, to which every other charge created subsequently to the service of the said notice shall be postponed.

9. Further as per Section 9 of the Bihar and Orissa Public Demand Recovery Act, 1914 the certificate debtor may within thirty days from the service of the notice required under section 7, may file his objection before the Certificate Officer and further the Certificate Officer shall pass appropriate orders after hearing and determining the objections.



10. On perusal of Annexure-2, it is evident that the Certificate Officer has issued notice under Section 7 of the Act on 09.10.2007 and called for the records and directed to submit the records on 18.01.2008 after due service of notice. The record further disclose that again the matter was taken up by the Certificate Officer on 10.12.2015. The Certificate Officer kept silent for a period of eight years from 09.10.2007 to 10.12.2015 and without following any due process of law ie., calling for the objections or of passing of the appropriate order under Section 10 of the Bihar and Orissa Public Demand Recovery Act, 1914 have directly issued notice under Section 17 of the Bihar and Orissa Public Demand Recovery Act, 1914 and issued Warrant of arrest against the petitioner issued under Section 17 of the Bihar and Orissa Public Demand Recovery Act, 1914.

11. Section 17 of the Bihar and Orissa Public Demand Recovery Act, 1914 reads as follows:-

17. Interest, cost and charges recoverable. -

There shall be recoverable in the proceedings in execution



of every certificate filed under this Act-(a) [interest upon the public demand to which the Certificate relates at the rate of twelve per centum per annum from the date of the signing of the certificate up to the date of realisation.] [Substituted by Bihar Public Demands Recovery (Amendment) Act, 1974 (7 of 1974)]

(b) such costs as are directed to be paid under Section 54 and

(c) all charges incurred in respect of-

(i) the service of notice under Section 7 and of warrants and other processes and,

(ii) all other proceedings taken or realising the demand.]

12. Admittedly, the Certificate Officer in Certificate Case No. 40/2007-08 has not passed any order under Section 10 of the Act. In the absence of any such order there cannot be any proceeding for execution of the said recovery. Further Warrant of arrest has been issued against the petitioner. Therefore, this Court is of the considerable view that the orders passed by the Certificate



Officer under Section 17 and issuing of Warrant of arrest are illegal and arbitrary and they are liable to be set aside.

13. In result, the Writ petition is allowed. Accordingly, order dated 09.01.2016 passed by respondent No. 3/Certificate Officer (Mines), Patna Circle, Patna in Certificate Case No. 40/2007-08 and the entire proceedings of the said Certificate case are hereby quashed.

(G. Anupama Chakravarthy, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.11.2024
Transmission Date	

