
(2015) 03 JH CK 0017
In the Jharkhand High Court
Case No : W.P. (C) No. 7213 of 2005

Allied Cement Company Private Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 11, 14, 7, 9

Citation : (2015) 4 AJR 299

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; Manoj Kumar, S.C. and A.K. Singh, J.C. to S.C., for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 15.03.1993 and order dated 31.08.2005 in Certificate Case No. 111 of 92-93, the petitioner M/s. Allied Cement Company Private Limited, has approached this court. The brief facts of the case are that, on 06.01.1993 the District Mining Officer, Hazaribagh-respondent No. 3 forwarded a requisition for realisation of a sum of Rs. 1,29,557.22 along with interest for the period between July, 1990 to December, 1992, on account of "Dead Rent". On 15.01.1993, the Certificate Officer (Mines) respondent No. 2 initiated a certificate proceeding which was registered as Certificate Case No. 111 of 92-93 and ordered notice to the petitioner under Section 7 of the Public Demand Recovery Act. On 15.03.1993, the representative of the petitioner appeared however, the Certificate Officer ordered warrant of attachment and arrest warrant. It is stated that the petitioner filed its objection on 04.10.1994 in Certificate Case No. 111 of 92-93 under Section 9 of the Act disclosing payment of Rs. 25,000/- vide demand draft dated 12.04.1993 however, without finally deciding the objection under Section 9 of the Bihar & Orissa Public Demands Recovery Act, 1914, vide order dated 31.08.2005, the Certificate Officer has again ordered issuance of warrant of attachment.

2. A counter-affidavit has been filed supporting the impugned orders dated 15.03.1993 and 31.10.2005. It is stated;

11. "That it is further stated and submitted that in his application the petitioner has clearly mentioned that the petitioner is ready to pay the certificated amount for which the petitioner has asked for a month's time to deposit the certificated amount but the petitioner did not turn up before the certificate court in the time mentioned in his application and therefore, the Certificate Officer (Mines) was forced to issue demand-cum-distress warrant vide process No. 378 dated 16.03.93. On 23.04.94, the petitioner appeared before the certificate court and submitted an application along with a demand draft for Rs. 25,000/- to be deposited against the certificate case under the writ".

3. Heard the learned counsel for the parties and perused the documents on record.

4. The learned counsel for the petitioner refers to Section 14 of the Bihar & Orissa Public Demands Recovery Act, 1914 and submits that without deciding, finally, the objection under Section 14 of the Act, no warrant of arrest or the attachment warrant could have been issued by the Certificate Officer. It is further submitted that the petitioner in his objection under Section 9 of the Act filed on 04.10.1994 has clearly averred that his total liability would come to Rs. 15,835.50 however, Certificate Officer without deciding the objection under Section 9 of the Act passed the aforesaid orders which cannot be sustained in law.

5. As against the above, the learned counsel for the respondent-State of Jharkhand reiterates the stand taken in the counter-affidavit and submits that since the petitioner failed to pay "Dead Rent" for the Lime Stone Mines for which a lease was granted by the State, a requisition for Rs. 1,29,557.22 was forwarded. Since, the petitioner has failed to deposit the admitted amount also, no interference is required in the present matter.

6. Having heard the learned counsel for the parties and after perusing the documents on record, I am of the opinion that the impugned orders dated 15.03.1993 and 31.08.2005 cannot be sustained in law. Section 14 of the Bihar & Orissa Public Demands Recovery Act, 1914 provides as under:

14. "When certificate may be executed - No step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of the service of the notice required by Sections 7 and 11, or when a petition has been duly filed under Section 9, until such petition has been heard and determined:

Provided that, if the Certificate Officer in whose office a certificate is filed is satisfied that the certificate-debtor is likely to conceal, remove or dispose of the whole or any part of such of his movable property as is liable to attachment under this Act, and that the realization of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such movable

property".

7. A perusal of the aforesaid provision makes it apparent that without deciding the objection under Section 9 of the Act filed by the petitioner-company, the Certificate Officer could not have ordered issuance of warrant of attachment or arrest warrant. In the impugned order dated 15.03.1993 or in order dated 31.08.2005, the Certificate Officer has not recorded his satisfaction that the petitioner is likely to abscond or conceal or remove or dispose of its property. Considering the above facts, impugned orders dated 15.03.1999 and 31.08.2005 are hereby quashed. It is ordered that the Certificate officer shall decide the objection under Section 9 filed by the petitioner on 04.10.1994, within a period of four weeks. The writ petition is allowed in the above terms.