
(2018) 07 JH CK 0015

In the Jharkhand High Court

Case No : Civil Writ Petition No. 3411 of 2011

Ranjeet Kumar Singh

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 04-07-2018

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 7, 9
Bihar and Orissa Public Demands Recovery — Rule 2, 9

Citation : (2018) 07 JH CK 0015

Hon'ble Judges : ANUBHA RAWAT CHOUDHARY, J

Bench : Single Bench

Advocate : Rishikesh Giri, Vishal Kumar Rai

Final Decision : Allowed

Judgement

1. Heard Mr. Rishikesh Giri, counsel appearing on behalf of the petitioner.

2. Heard Mr. Vishal Kumar Rai, counsel appearing on behalf of the respondents.

3. This writ petition has been filed for the following reliefs:-

(a) For quashing the certificate dated 11.01.2008 issued under the signature of Certificate Officer (Mines) Hazaribagh, showing a public demand to

the tune of Rs. 2,90,789/- enhanced to the tune of Rs. 3,69,652/- which stands passed in utter violation, complete non-compliance of the statutory

provisions under the Bihar and Orissa Public Demands Recovery Act, 1914, because neither any notice was served as required under Section 7 of the

Act, nor any objection was heard denying the liability of the Certificate, being the certificate exparte in nature.

(b) To stay the operation of warrant of attachment dated 17.08.2009 as contained in Annexure-5 during pendency of the application.

(c) For issuance of direction upon the respondent no. 3 to hear the petitioner u/s 9 of the Act and adjudicate the matter in accordance with law.Â Â

4. Counsel for the petitioner submits that he has confined his writ petition to the point that warrant of attachment has been issued by that Court of

Certificate Officer, although no notice under Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 has been served upon the

petitioner and therefore the petitioner has been deprived of his right to raise his objection under Section 9 of the said Act.

5. He submits that the impugned order has been passed in gross violation of principles of natural justice . He submits thatÂ the petitioner has made

specific statement at paragraph no. 10 of the writ petition that the petitioner was never served with notice under Section 7 of the Bihar and Orissa

Public Demands Recovery Act, 1914 which had ultimately led to passing of the ex-parte impugned order.Â Counsel for the petitioner also submits

that respondents have not filed paragraph wise comment to the writ petition and the statement made in paragraph no. 10 of the writ petition has not

been denied by the respondents.

6. Counsel for the respondents on the other hand submits that the petitioner has alternative remedy of appeal against the impugned order, accordingly,

this writ petition is not maintainable.

7. Considering the material available on record and after hearing counsel for the parties this court is inclined to entertain this writ petition as the

impugned order suffers from gross violation of principles of natural justice and fair play.Â This court further finds from the ordersheetÂ of the

certificate officer, as annexed with the writ petition ,that the procedure for service of notice under Section 7 of Bihar and Orissa Public Demands

Recovery Act, 1914 read with rule 2 to 9 of the rules framed under the aforesaid Act, has not been followed before passing the impugned order.

8. Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914 reads as under:-

7. Service of notice and copy of certificate on certificate debtor- When a certificate has been filed in the office of a Certificate Officer under Section

4 or Section 6, he shall cause to be served upon the certificate-debtor under Section 4 or Section 6, he shall cause to be served upon the certificate-

debtor, in the prescribed manner, a notice in the prescribed form and a copy of

the certificate.

9. The corresponding rule for service of notice is rule 2 to 9 which are quoted as under:-

2. Mode of service.-Service of notice issued under section 7, or under any provision of this Act, shall be made by delivering or tendering a copy

thereof signed by the Certificate Officer or such ministerial officer as he authorizes in this behalf, and sealed with the seal the Certificate officer.

3. Service on certificate-debtor or his agent.-Wherever it is practicable, service shall be made on the certificate debtor in person, unless he has an

agent empowered to accept service in which case service on such agent shall be sufficient.

4. Service on adult male member of certificate-debtor's family.-Where the certificate-debtor cannot be found, and has no agent empowered to

accept service of the notice on his behalf service may be made on any adult male member of the family of the certificate-debtor who is residing with

him. Explanation- A servant is not a member of the family within the meaning of this rule.

5. Person served to sign acknowledgement.-Where the serving officer delivers or tenders a copy of the notice to the certificate-debtor personally, or

to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an

acknowledgement of service endorsed on the original notice.

6. Procedure where certificate-debtor refuses to accept service or cannot be found.-Where the certificate-debtor or his agent, or such other person

aforesaid, refuses to sign the acknowledgement, or where the serving officer, after using all due and reasonable diligence, cannot find the certificate-

debtor, and there is no agent empowered to accept service of notice on his behalf, nor any other person on whom service can be made, the serving

officer shall-

(a) affix copy of the notice on the outer door or some other conspicuous part of the house in which the certificate-debtor ordinarily resides or carries

on business or personally works for gain; or

(b) if there be land affected by the notice, affix a copy of the notice on some conspicuous place in the office of the Certificate Officer and also on

some conspicuous part of land.

And shall then return the original to the Certificate officer by whom it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy; the circumstances under which he did so, and the name and address of the person (if any) by whom the house or land was identified and in whose presence the copy was affixed.

7. Endorsement of time and manner of service.-The serving officer shall, in all cases in which the notice has been served under rule 5, endorse or annex, or cause to be endorsed or annexed, on or to the original notice, a return stating the time when and the manner in which the notice was served and the name and address of the person (if any identifying the person served and witnessing the delivery or tender of the notice.

8. Examination of serving officer.-Where a notice is returnable under Rule 6, the Certificate Officer shall, if the return under that rule has not been verified by the affidavit of the serving Officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Certificate Officer, or subject to any general order of the collector by an Assistant Collector, Deputy Collector or Sub- Deputy Collector, touching his proceedings, and make such further inquiry in the manner as he thinks fit; and shall either declare that the notice has been duly served or order such service as he thinks fit.

9. Service by post.-Notwithstanding anything hereinbefore contained, the notice may, if the Certificate Officer so directs, be served by post.

10. It has been specifically pleaded by the petitioner at paragraph no. 10 of the writ petition that the petitioner was not served with notice under

Section 7 of the Bihar and Orissa Public Demands Recovery Act, 1914. This fact has not been denied by the respondents in their counter affidavit.

Accordingly non service of notice issued to the petitioner stands admitted by the respondents. Moreover from the ordersheet of the certificate officer

there is no order recording that the notice has been served upon the writ petitioner, and, there is no service report of the notice as is apparent from the ordersheet itself.

11. It further appears that notice by the Certificate Officer was issued for the first time vide order dated 11.01.2008 and the next date in the order

sheet is 25.08.08 on which day it was observed that 30 days have elapsed from the date of issuance of notice and a reminder was issued fixing

30.09.2008 as the next date. The next order sheet is dated 30.04.2009 and on this date the demand was confirmed on account of non filing of any objection by the certificate debtor and a direction was issued to issue the demand notice. Thereafter a warrant was issued vide order dated 17.09.2009. The orders dated 30.04.2009 and 19.09.2009 also do not record service of notice upon the petitioner. From the order sheet it appears that there is no service report and there is no order indicating valid service of notice. Thus this court finds that the demand has been confirmed upon the petitioner and distress warrant has been issued against the petitioner by the certificate officer without service of notice upon the petitioner which has resulted in denial of right of the petitioner to protest or object to the certificate amount before the certificate officer by filing his objection under section 9 of Bihar and Orissa Public Demand Recovery Act, 1914.

12. This court is of the considered view that right to file objection under section 9 of Bihar and Orissa Public Demand Recovery Act, 1914 to the notice issued under section 7 of the said Act is a statutory right of the petitioner which cannot be denied to the petitioner by non service of notice issued under section 7 of Bihar and Orissa Public Demand Recovery Act, 1914. Further the court finds that the mode and method for service of notice upon the certificate debtor has been provided in the rules which have been quoted above. The ordersheet of the certificate officer clearly shows that the mode of service of notice as provided under rule 2 to 9 of the rules have not been followed by the certificate officer.

13. Accordingly, the orders dated 30.04.2009 confirming the demand of the certificate amount upon the petitioner ; the order dated 17.08.2009 by which distress warrant was directed to be issued upon the petitioner as well as the warrant itself dated 30.08.2009 as contained in annexure 5 to the writ petition are hereby quashed and set aside and the matter is remanded back to the certificate officer for passing fresh order after giving an opportunity to the petitioner to file his objection and after giving an opportunity of hearing to the petitioner.

14. At this stage, counsel for the petitioner submits that the petitioner shall appear before the Certificate Officer along with his objection within a period of one month from today.

15. Considering the submission made by the counsel for the petitioner, the

petitioner is directed to appear before the Certificate Officer along with objection under section 9 of the aforesaid Act within a period of three months from today and upon his appearance, the Certificate Officer is directed to pass order on his objection after considering the materials available on record and after giving an opportunity of hearing to the petitioner within a period of one month thereafter.

16. If the petitioner does not appear before the Certificate Officer within a period of three months from today, the impugned orders shall revive.

17. Accordingly, this writ petition is allowed with the aforesaid observations and directions.