

(2012) 09 JH CK 0152
In the Jharkhand High Court
Case No : Writ Petition (C) No. 3797 of 2012

Sanjay Kumar Khemka

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 10, 7, 9

Citation : AIR 2013 Jhar 71 : (2013) 2 AJR 174 : (2013) 1 JLJR 30

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Shailesh, for the Appellant; V.K. Prasad, S.C. (L and C), for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari

1. The grievance of the petitioner is that without serving any notice u/s 7 of the Bihar and Orissa Public Demand Recovery Act (hereinafter to be referred as the said Act), the Certificate Officer, Dhanbad has not only determined the liability u/s 10 of the said Act, he has also issued distress warrant against the petitioner by order dated 14.5.2012. Learned counsel appearing on behalf of the petitioner submitted that the impugned order issuing the distress warrant without following the mandatory procedure, as laid down under Sections 7, 9 and 10 of the Bihar and Orissa Public Demand Recovery Act is wholly illegal, arbitrary and is liable to be quashed.

2. The writ petition has been opposed by the respondents by filing counter affidavit. It has been stated, inter alia, that the certificate was received from Uttar Pradesh and notice was issued to the petitioner-certificate debtor, but he had been evading appearance before the Certificate Officer. After the notice was served and no objection was received, the Certificate Officer has passed the said impugned order. There is no illegality or infirmity in the order and no ground is

made out for interference with the said order.

3. I have heard learned counsel for the parties and perused the documents brought on record.

4. From the order sheet of the Certificate Officer (Annexure-1 to the writ petition) dated 27.8.2010 I find that there is an order for issuing notice u/s 7 of the said Act passed by the Certificate Officer, Dhanbad. Thereafter, there was no order in 2010. I further find that on 29.9.2011 the record was placed before the Certificate Officer. Without verifying as to whether the notice was served on the Certificate debtor, the Certificate Officer passed the impugned order upholding the liability of the certificate amount on the petitioner and passed order for issuing distress warrant. Again on 14.5.2012, an order was passed for issuing a fresh distress warrant against the petitioner.

5. The petitioner has specifically denied to have received any such notice u/s 7 of the said Act, as alleged by the respondents.

6. The respondents in their counter affidavit have explained that the notice was issued by letter No. 521 dated 27.8.2010 and was received by one staff on 30.9.2010, while the petitioner was out of station. Further, it has been stated that notice was again sent and was received by the petitioner on 5.6.2012 through one Naresh.

7. Though it has been stated by the respondents that the notice was served on the petitioner, the said fact has been categorically denied by the petitioner. However, neither that staff nor the said Naresh, has been examined before the Certificate Officer to prove the service of notice on the petitioner.

8. There was, thus, no legal material before the Certificate Officer for holding the service of notice u/s 7 on the petitioner as sufficient.

9. There was, thus, no ground for proceeding further and passing the impugned order without giving any opportunity to the petitioner to file his objection and hearing as required under Sections 9 and 10 of the said Act. There was, thus, blatant violation of mandatory provision of law as well as the principle of natural justice and the impugned order is wholly illegal and unsustainable.

10. In view of the above, this writ petition is allowed. The impugned orders dated 29.9.2011 and 14.5.2012 passed by the Certificate Officer in Certificate Case No. 03 (OD) 10-11 are quashed. The matter is remitted to the Certificate Officer, Dhanbad for proceeding with the case after giving opportunity to the petitioner for filing objection against the notice, if any, and for hearing, if so required, and to dispose of the matter in accordance with law. Since the petitioner has now knowledge about the certificate proceeding, he shall file objection/representation, if any, within thirty days from today. The Certificate Officer, on receipt of the objection or after expiry of thirty days, shall proceed with the case and pass appropriate order.