
(2016) 02 JH CK 0164

In the Jharkhand High Court

Case No : W.P. (C) No. 6258 of 2015 with W.P. (C) No. 6297 of 2015

Sumit Kumar Keshri

APPELLANT

Vs

State of Jharkhand and other

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

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

Citation : (2016) 2 JBCJ 393 : (2016) 2 JCR 406 : (2016) 4 JLJR 148

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Srijit Choudhary, Sr. SC-III, JC to A.A.G. and H.K. Mehta, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. Common issues are involved in both the writ petitions. They have been heard together and have been decided by this common order with the consent of the parties at this stage.

3. In both the cases, certificate cases were initiated against the same petitioner being Certificate Case No. 05(GR)/2009-10 and 06(GR)/2009-10 for recovery of certain demands i.e. Rs. 1,18,946/- towards principal and Rs. 57,094/- towards interest in the first case at the time of institution of the demand. In the second case, amount recoverable is Rs. 79,296/- towards principal and Rs. 38,062/- towards interest at the time of institution of the demand before the Certificate Officer. Petitioner received a notice under section 7 of Bihar and Orissa Public Demand Recovery Act, 1914 (now Jharkhand Act) in both the cases and submitted his objection after considerable time, as would appear from the pleadings on record. He is aggrieved on account of issuance of warrant of attachment for recovery of Rs. 3,04,559/- and Rs. 1,95,738/- by the impugned Annexure-4 in issued by the Respondent No. 3 - Certificate Officer, (Mining),

South Chhotanagpur Circle, Ranchi in both the cases to be returnable by 31.12.2015 after rejection of his objection by a non-speaking orders dated 28.08.2014.

4. Learned Senior counsel for the petitioner has assailed the impugned warrant of attachment on the grounds that the Certificate Officer without deciding the objection filed by the petitioner and without making determination in terms of section 10 of the Act of 2014, has straightaway proceeded to issue warrant of attachment.

5. On this point of challenge, learned State counsel was asked to obtain instructions. Learned counsel, on instructions, submits that as a matter of fact, no specific order determining the liability of the certificate-debtor in terms of section 10 of the Act of 2014 has been passed. Learned counsel for the State, on instruction, submits that on the limited point, matter can be remanded to the learned Certificate Officer to decide the liability in terms of section 10 of the Act expeditiously and within time frame fixed by this Court and thereafter proceed in accordance with law for recovery of any debts.

6. Learned counsel for the petitioner submits that on such remand, petitioner may be allowed to raise all available grounds of facts and law before the Certificate Officer. In the event of remand, the impugned warrant of attachment and order dated 28.08.2014 may be quashed.

7. I have considered the submissions of the parties in the light of the relevant material facts pleaded. Relevant provisions of Section 10 of Bihar and Orissa Public Demand Recovery Act, 1914 (now Jharkhand Act) is quoted hereunder for better appreciation.

"10. Hearing and determining of such petition.- The Certificate Officer in whose office the original certificate is filed shall hear the petition, take evidence (if necessary) and determine whether the certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed; and may set aside, modify or vary the certificate accordingly:

Provided that if the Certificate Officer is not the Collector, and considers that the petition involves a bona fide claim of right to property, he shall refer the petition to the Collector for orders and the Collector, if he is satisfied that a bona fide claim of right to property is involved, shall make an order cancelling the certificate."

8. As is apparent, on filing of demand and after issuance of notice by the Certificate Officer in terms of Section 7 of the Act, the certificate-debtor is entitled to file an objection denying its liability within a specified period. Thereafter, the Certificate Officer is obliged in law to hear the petition, take evidence (if necessary) and determine whether certificate-debtor is liable for the whole or any part of the amount for which certificate was signed; and may set aside, modify or vary the certificate accordingly. This requirement of law has not

been met in the certificate proceedings, out of which, impugned warrant of attachment arises, as is apparent from the stand of the counsel for the respondent State.

9. In such circumstances, orders suffer from failure to follow the procedure prescribed in law before a liability of such demand is fixed upon the certificate debtor. In such circumstances, impugned orders dated 28.08.2014 in both the certificate proceedings rejecting the objection of the petitioner in a cryptic manner without application of mind, cannot stand the test of legal scrutiny and are accordingly quashed. Consequential orders issued thereafter effecting warrant of attachment are also quashed. Matter is remanded to the Respondent No. 3 - Certificate Officer, (Mining), South Chhotanagpur Circle, Ranchi for taking a decision in terms of section 10 on the demand raised against the petitioner after giving petitioner an opportunity of hearing in accordance with law.

Needless to say, petitioner may urge any such grounds of law available to him during course of hearing. It may not be understood that this Court has exercised any opinion, one way or the other on merit.

10. In the circumstances of the case, it is felt that expeditious decision be taken by the respondent no. 3 - Certificate Officer, (Mining), South Chhotanagpur Circle, Ranchi within a period of four weeks from the date of receipt of a copy of this order.

Petitioner shall cooperate in the proceeding. It would be open to the Certificate Officer to proceed in accordance with law thereafter dependent upon determination undertaken in terms of section 10 of the Act of 1914.

11. Writ petitions are allowed in the manner and to the extent indicated herein above.