

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1229 of 2015

Sanjay Kumar, son of Sri Surendra Prasad Sinha, resident of Village Basantpur,
P.S. Righa, Dist. Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Works Department, Bihar, Patna.
2. The Principal Secretary, Rural Works Department, Bihar, Patna.
3. The Engineer in Chief, Rural Works Department, Bihar, Patna.
4. The Chief Engineer, South Bihar, Patna.
5. The Superintending Engineer, Biharsharif, Nalanda.
6. The District Magistrate, Nalanda.
7. The Certificate Officer, Nalanda.
8. The Executive Engineer, Rural Works Department Works Division, Harnaut, Nalanda.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Adv.

For the Respondent/s : Mr. Shivendra Kishore, AAG7

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 27-01-2015

Heard learned counsel for the parties as with regard to
the following prayer made in paragraph no. 1 in this writ application:-

"To quash the entire proceeding of certificate case no.
01/2010-11 pending before the Certificate Officer,
Nalanda in view of completion of work as against the
money advanced to the petitioner for which it has been
filed."

2. Having regard to the admitted position that certificate
proceeding against the petitioner cannot be said to be without
jurisdiction inasmuch as the petitioner himself admits that he was
given amount involved in Certificate Proceedings by way of advance

and that amount is sought to be recovered, this writ application, challenging the entire certificate proceeding, must be held to be wholly misconceived and in fact ill advised.

3. The petitioner infact has statutory alternative remedy in terms of Section 9 of the Bihar Public Demand Recovery Act hereinafter referred to as the Act laying down that upon service of notice under Section 7 of the Act, the person concerned being a certificate debtor has a right to file objection which has to be considered by the Certificate Officer and disposed of by a reasoned order in terms of Section 10 of the Act. Let it be noted that the legislature has also provided appeal under Section 60 of the Act and again revision under Section 62 of the Act and all these remedies have been held by the Division Bench of this Court in the case of **Sawar Mal Choudhary & Ors. Vs. State Bank of India & Ors.** reported in **1986 PLJR 660** to be statutory remedy barring the filing of the writ application without exhausting those statutory remedies.

4. The only apprehension of the petitioner which has been sought to be highlighted in the voluminous writ application followed by the marathon arguments by Mr. Tej Bahadur Singh learned Senior Counsel for the petitioner that the petitioner has got certain outstanding amount to be settled, inasmuch as, even when he has already completed the work, the payment thereof has not been



made, can only lead to a question of set off while realising the amount of certificate. This Court does not have any iota of doubt that if such a plea of set off is raised by the petitioner by way of his objection, the Certificate Officer will definitely look into this aspect and will do the needful so that the petitioner is not unnecessarily harassed in realisation of amount of certificate dues even when there are certain amount admissible and payable to him which can be adjusted towards the amount of certificate dues.

5. Thus, if the petitioner raises a plea of adjusting the payable amount against his certificate dues, the Certificate Officer will obtain necessary comments from the requisitioning department and thereafter proceed to decide the matter by passing a reasoned order under Section 10 of the Act in accordance with law. As noted above, if the petitioner is aggrieved by such order under Section 10 of the Acts he will have the remedy of appeal and revision.

6. When such an observation has been made, Mr. Tej Bahadur Singh, learned senior counsel for the petitioner, seeks permission of this Court to move before the Certificate Officer for filing an objection under Section 9 of the Act.

7. According such leave the petitioner is directed to appear before the Certificate Officer within a period of four weeks from today and if the petitioner appears before the Certificate Officer

and files his objection under Section 9 of the Act, the Certificate Officer, having obtained necessary comments/reaction of the requisitioning authority to such of the pleas raised by the petitioner in his objection, will proceed to decide the matter under Section 10 of the Act in accordance with law.

8. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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