

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17 of 2009

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Abrar Ahmad @ Md.Chand, son of late Iftikar Ahmad, resident of Mohalla
Rai Jai Krishna Road, Mittan Ghat, P.S. Khajekalan, District Patna

.... Petitioner

Versus

1. The State of Bihar
2. Deputy Development Commissioner, Patna Bihar
3. District Magistrate, Patna, Bihar
4. Additional District Magistrate, Development, Patna, Bihar
5. Sub-divisional Officer, Sadar, Patna, Bihar
6. Block Development Officer, Sadar, Patna, Bihar
7. Superintending Engineer, Civil, Patna Bihar
8. Executive Engineer Civil, N.R.E.P. Patna, Bihar
9. Assistant Engineer, Civil, Sadar, Patna, Bihar
10. Junior Engineer, Civil, Sadar Patna, Bihar
11. Gaya Sagar Singh, son of not known, Labour Enforcement Officer,
Sadar, Patna

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Arvind Kr.Mouar Mr. Harish Kumar Mr. Raj Krishna Jha
For the Respondent/s	:	Mr. (Gp5) Mr. Anshuman Mr. Rajeev Nayan

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 13-01-2015 Heard learned counsel for the parties.

Having regard to the fact that the claim for payment of additional amount is not admitted by the respondents in the counter affidavit, this writ application for the following relief:

“For directing and commanding the authority concerned to pay the petitioner Rs.1,40,000/- for the additional work got done by the respondents taking him into good faith that the payment would be done for the same and the work is to construct the P.C.C. Road from the house of the petitioner

at Rai Jai Krishna Road to the turning near the house of one Jhamali Mahto measuring 3360 sq.ft. under the scheme no. 96/2007 out of member of parliament development fund, but the respondents have got constructed the road measuring 5622 sq. ft. i.e. 2268 sq. ft. extra.’

is definitely not maintainable.

Let it be noted that the respondents in paragraphs no. 5, 6 and 7 of the counter affidavit have completely denied such claim of the petitioner which for the sake of clarity and convenience is quoted hereinbelow:

“5. That in this respect it is humbly and respectfully submitted and stated that the claim of the petitioner is completely false and concocted. It is submitted and stated that the actual work was for construction of PCC road from Ram Jai Krishna Road, house of Md. Chand to Jhameli Mahto under Scheme no. 96/06-07. The said work was assigned to respondent no.11 i.e. Mr. Ganga Sagar Singh for which an agreement was signed between respondent no.6 (i.e. the Block Development Officer, Patna Sadar) and respondent no.11 and accordingly, work order was issued in favour of respondent no.11.

6. That it is submitted and stated that the respondent no.11 completed the work as per the work order and the statement that work was done by the petitioner is completely false. The actual fact is that when the construction work was started by respondent no.11, the petitioner approached respondent no.11 for supply of stone chips, sand and the petitioner was duly paid for the

quantity of material which he supplied.

7. That it is submitted and stated that the statement made by the petitioner that the measurement of work was done by the department which comes to 5628 sq.ft. is absolutely false. The Annexure annexed as Annexure 5 in support of the said statement has not been issued by the department or by any of the respondents.”

Let it be noted that such copy of the counter affidavit was served on the learned counsel for the petitioner way back on 9.8.2010 but there is no rejoinder to the said counter affidavit which would in turn amount to admitting of the aforesaid fact asserted by the respondents.

Thus, when there is a complete dispute with regard to the claim of the petitioner, the remedy under Article 226 of the Constitution of India is definitely misconceived and ill-advised.

That being so, this application is dismissed.

The dismissal of this application, however, will not come in the way of the petitioner in claiming the amount in question by taking any other recourse as may be available to the petitioner in law.

(Mihir Kumar Jha, J)

surendra/-

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