

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1196 of 2009

=====

Sunil Tiwari, son of late Ram Dhani Tiwari, resident of village Radma, P.S.
Ranchi Road, P.O. Palamu, District Daltonganj (Jharkhand)

.... Petitioner

Versus

1. The State of Bihar
2. The Secretary cum Commissioner, R.E.O., Govt. of Bihar, Patna
3. The Chief Engineer, R.E.O., Govt. of Bihar, Patna
4. The Executive Engineer, R.E.O. Division, Sasaram, Bihar, Patna
5. The Divisional Officer, R.E.O. Division, Dehri, Rohtas, Bihar, Patna
6. The Anchaladhikari, Nasriganj, Anchal Rohtas, Bihar, Patna

.... Respondents

=====

Appearance :

For the Petitioner/s : Mr. Avanish Kumar Singh, Adv.

For the Respondent/s : Mr. (AAG-11)

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

6 08-01-2015 Heard learned counsel for the parties as with regard to the
following relief prayed in this writ application:

“i) Issuance of a writ in the nature of mandamus commanding upon the respondents to provide a new and fresh alignment for Gohi P.W.D. Road to Madhopur Ghari, Bharkol Road on a public land and not on a private and raiyati land so the project could be completed in the interest of the public.

ii) Issuance of a writ again in the nature of writ of mandamus the respondents to either first acquire the private raiyati land provide alternative land for construction of the road and the enter into a fresh agreement with encumbrance free alignment or in the alternative close the agreement if the lands are not available.”

While this Court is of the view that the petitioner has filed



a wholly misconceived writ application because he cannot enforce the terms and conditions of a non-statutory contract under Article 226 of the Constitution of India, in the light of the judgment of the Apex Court in the case of Radhakrishna Agarwal & ors. v. State of Bihar & ors., reported in AIR 1977 SC 1496 this much submission of the learned counsel for the petitioner makes a sense that once the petitioner in terms of the agreement had done part of the allotted work whereafter impediments were created on account of not providing the land on which alignment of the road could be completed by the petitioner, he would be at least entitled for full payment of the admitted amount for the work done by him. Since this aspect of the matter was never raised in the writ application and now has today been for the first time brought by way of oral submission by learned counsel for the petitioner this Court would give liberty to the petitioner to file a representation to the concerned respondent, who will thereafter take a decision for making payment in accordance with the terms and conditions of the inter-party agreement which itself provides for closing out of the contract for any reason by either of the party.

This Court hopes and believes that if such a representation is filed by the petitioner, the same shall be disposed of expeditiously and preferably within a period of four months from

the date of receipt of this order and admissible payment if any to the petitioner shall also be made within next two months.

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

(Mihir Kumar Jha, J)

surendra/-

U			
---	--	--	--