

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 23051 of 2011

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Awadhesh Kumar Sinha, Son of Late Aklu Singh, Resident of Mohalla –
Sirhiya Ghat, Durga Shankar Road, Chowk, P.S. – Kotwali, District – Gaya.
..... Petitioner

Versus

1. The State of Bihar through the Secretary, Minor Water Resources Department, Government of Bihar, Patna.
 2. The Secretary, Minor Water Resources Department, Government of Bihar, Patna.
 3. The Joint Secretary, Minor Water Resources Department, Government of Bihar, Patna.
 4. The Under Secretary, Minor Water Resources Department, Government of Bihar, Patna.
 5. The Chief Engineer, Minor Water Resources Department, Patna.
 6. The Superintending Engineer, Minor Irrigation Circle, Gaya.
 7. The Executive Engineer, Minor Irrigation Division, Gaya.
 8. The Finance Commissioner, Government of Bihar, Patna.
 9. The Sub-Divisional Officer, Sadar-cum-House Controller, Gaya.
- Respondents

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Appearance :

For the Petitioner/s : Mr. Dhruba Mukherjee
For the Respondent/s : AC to SC - 11

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6. 23-09-2015 Heard Sri Dhruba Mukherjee, learned senior counsel,
who has appeared on behalf of petitioner and learned A.C. to
Standing Counsel – 11.

The petitioner, invoking writ jurisdiction of this Court
under Article 226 of the Constitution of India, has mainly prayed
for following reliefs:-

1. **For issuance of a writ of mandamus or any other appropriate writ, order or direction commanding the respondent authorities to pay the petitioner admitted arrear of rent amounting to Rs. 1,42,400/- in terms of Lease Agreement dated 15.4.1998 signed between the Petitioner and the Executive Engineer, Minor Irrigation Division, Gaya (Respondent no.7) read with order dated 3.9.2008 passed**

in House Control case no. 03/08 by the S.D.O.-cum-House Controller, Gaya (Respondent No.9);

2. For issuance of a writ of Mandamus or any other appropriate writ, order or direction commanding the respondent authorities to pay the petitioner the admitted and agreed interest on delayed payment amounting to Rs. 27,19,884/- in terms of clause no.9 of the Lease Agreement dated 15.4.1998, particularly taking into account that the said fund of Rs. 27.199 lakhs has already been allotted by the Secretary, Minor Water Resources Department, Government of Bihar, Patna (Respondent No.2) to the Executive Engineer, Minor Irrigation Division, Gaya (Respondent No.7); and
3. For a further direction upon the respondent authorities, particularly Respondent No.2 to issue a sanction order for the interest amount as has been requested by the Executive Engineer, Minor Irrigation Division, Gaya vide his letter no. 26 dated 10.1.2011.

It has been pleaded that petitioner's premises measuring 3565 sq.ft. was taken on rent by respondent no. 7/Executive Engineer, Minor Irrigation Division, Gaya. Taking the premises on rent, a lease agreement was executed in between the parties i.e. the petitioner and the Executive Engineer, Minor Irrigation Division, Gaya.

Learned senior counsel for the petitioner submits that despite the fact that respondent no. 7 had taken possession of the premises in question, for a long period, the rent was not deposited and even in terms of clause – 9 of the agreement, any interest was paid. Learned senior counsel for the petitioner further referred to



Annexure – 3 to the writ petition i.e. an order passed by the Sub-Divisional Officer-cum-House Controller, Sadar Gaya in Rent Control Case No. 03 of 2008, whereby, the learned House Controller had fixed fair rent on application filed by respondent no. 7 i.e. the Executive Engineer and rent was enhanced from Rs. 11,000/- (eleven thousand) per month to Rs. 17,700/- (seventeen thousand & seven hundred) per month, which was directed to be effected from 01-04-2000. Even though, fair rent was fixed, learned senior counsel for the petitioner submits that rent was not paid and thereafter, the petitioner was constrained to approach this Court by filing the present writ petition. However, he submits that during the pendency of the writ petition, the arrear rent has already been paid to the petitioner. Learned senior counsel for the petitioner has referred to **Annexure – 9** to the writ petition i.e. memo no. 1004 dated 27-10-2010 issued by the Executive Engineer, Minor Irrigation Division, Gaya requesting the Joint Secretary, Minor Water Resources Department, Patna for allotment of funds for payment of interest @ 2%. As per **Annexure – 9**, total amount of **Rs. 27,19,924/-** was requested for allotment. Learned senior counsel for the petitioner submits that on request made by the Executive Engineer, Gaya, the department had already allotted the fund, vide **Annexure – 10** to the writ



petition i.e. contained in Memo No. 65 dated 27-12-2010. By way of referring to **Annexure – 10**, he submits that allotment in respect of interest for Gaya Division to the tune of Rs. 27.199 lacks has already been done. Even after receipt of the allotment, the Executive Engineer, Minor Irrigation Division, Gaya is sitting tight over the matter and not making payment to the petitioner. Accordingly, a prayer has been made to direct the respondents to make payment of the due amount, in view of allotment letter i.e. **Annexure – 10** to the writ petition.

Learned State counsel has opposed the prayer of the petitioner. He submits that so far as arrear rent is concerned, as averred in the counter affidavit and admitted by the petitioner, same has already been paid. However, in respect of interest, he submits that for claiming interest, the petitioner may be advised to avail appropriate remedy. This issue may not be adjudicated in the present writ petition.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Ofcourse, while exercising writ jurisdiction under Article 226 of the Constitution of India, it is not required for this Court to examine the claim of interest, particularly; in view of condition imposed in the agreement. However, in view of facts and circumstances,

particularly; request made by the Executive Engineer, vide **Annexure – 9** to the writ petition for allocating the fund for disbursement of the interest amount and also the allotment letter issued, vide **Annexure – 10** to the writ petition, the Court is of the opinion that even while exercising writ jurisdiction, this Court is fully competent to issue direction to the respondent no. 7/Executive Engineer to complete the formalities, which is to be done by way of payment of allotted interest amount to the petitioner.

Accordingly, in view of facts and circumstances, particularly; **Annexures 9 & 10** to the writ petition, the writ petition stands allowed with a direction to the Executive Engineer/respondent no. 7 to take all steps so that the claimed interest amount, as per allotment, may be paid to the petitioner within a period of eight weeks from the date of receipt/production of a copy of this order, failing which, the respondent no. 7 shall be liable to pay interest on the aforesaid amount @ 6%, which shall be recovered from the pocket of respondent no. 7.

The writ petition stands allowed.

(Rakesh Kumar, J.)

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