

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.396 of 2009

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Pramod Kumar, Son of Sri Shyamlal Prasad, resident of Village- Usri, P.S.-
Pakribarawan, District- Nawadah.

.... Petitioner/s

Versus

1. The State of Bihar
2. the Commissioner, Magadh Division, Gaya.
3. The District Magistrate, Nawadah.
4. The Block Development Officer, Pakribarawan, District- Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Prasad Singh

For the Respondent/s : Mr. (Sc17)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 15-01-2015

Heard learned counsel for the parties as with regard to

the following relief prayed in this writ application:

"1.(i) By issuing an appropriate writ, quash the requisition orders, in the form of notice, under letters no. 359, 360 dt. 17.05.04 and 815 dated 14.09.2004 issued by the B.D.O., Pakribarawan (respondent no. 4) contained in Annexure-1 series by which petitioner has been asked to deposit the total sum of Rs. 1,03,609/- in block nazarat, otherwise F.I.R. will be lodged against him. Though works have already been completed by the petitioner under the schemes in question.

(ii) By issuing an appropriate writ concerned respondent be commanded /directed to produce all the relevant measurement books of the concerned schemes before this Hon'ble Court at the time of hearing of this petition, so that matter may become clear that whether petitioner is at all liable to deposit the requisite amount or merely he is being harassed deliberately by respondent no. 4 with motivated intention at the behest of some interested and powerful person.

(iii) By issuing an appropriate writ concerned respondent be commanded/directed to pay reasonable cost to the petitioner for unnecessary dragging to the courts, because respondent no. 4 deliberately and with mala fide intention at the behest of local Mukhiya namely Arjun Prasad, has tried to harass the petitioner and his family members."

2. Learned counsel for the petitioner has submitted that

the impugned show cause notice dated 14.09.2004 directing the



petitioner to deposit a sum of Rs. 29,835/- by 5th of September 2004, failing which the petitioner was to be subjected to lodging of F.I.R. against him, is wholly bad on fact or in law. In this regard, he has referred to the report of Block Development Officer and the endorsement of the Collector on the application filed by the petitioner for the purposes to show that the petitioner actually had worked for a larger amount, but the authorities, without looking into the measurement recorded in the measurement book (M.B.), have held the petitioner liable to pay the amount of Rs. 29,835/-.

3. In this case, a counter affidavit has been filed wherein the respondents have denied the completion of work by the petitioner. They have also explained that after the impugned show cause notice directing the petitioner to deposit the amount, in question, was issued, the petitioner had filed an application before the Collector of the District who, having found no merit therein, had rejected the same and the said order was also affirmed by the Divisional Commissioner on an application filed by the petitioner.

4. Learned counsel for the petitioner, in reply, has submitted that the order passed by the Collector of the District is also bad because he did not decide the issue on merit.

5. In the considered opinion of this Court, the



petitioner has some misconception and/or misconceived notion as with regard to jurisdiction of this Court under 226 of the Constitution of India. This Court cannot go into the disputed questions as to whether a contractor has completed the work or the measurement shown in the measurement book is correct or otherwise. In fact, all these matters flowing out of a non-statutory contract, no writ petition can lie before this Court. Reference in this connection may be usefully made to the judgment of the Apex Court in the case of *M/s Radhakrishna Agarwal & Ors. Vs. State of Bihar & Ors.* reported in *AIR 1977 SC 1496* .

6. That apart, the petitioner was only asked to deposit certain amount given in advance to him which was not accounted for by him in terms of the entry made in the measurement book. The learned counsel for the petitioner infact has also no instruction as to what action has been taken against the petitioner when he had not deposited the amount in question demanded from him vide impugned notice, as contained in Annexure-1.

7. In that view of the matter, while this Court will have no reason to entertain such writ application because the petitioner, being governed by an inter parte agreement, will have to find out the remedy either before the Civil Court or before the Arbitrator, for enforcing the terms of contract. As of now, when the learned

counsel for the petitioner is not even aware of any kind of action taken against the petitioner, this writ application seems to be wholly misconceived and ill-advised. As a matter of fact, the validity of the show cause notice issued in the year 2004 which was assailed by the petitioner in this Court in the year 2009 cannot be now gone into by this Court in the year 2015.

8. If the petitioner, however, has still some grievance, he will be at liberty to move before the Collector of the District who will look into the aspect and take an appropriate decision as may be permissible in law.

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

(Mihir Kumar Jha, J)

Sujit/-

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