

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.900 of 2009

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Umesh Prasad Shrivastava son of late Vishwanath Prasad, resident of village-Tali, P.O. Tali, Police Station Guthani, District Siwan.

.... Petitioner/s

Versus

- 1.The State of Bihar
- 2.The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
- 3.The Secretary, Building Construction Department, Government of Bihar, Patna.
- 4.The Engineer-in-Chief, Water Resources Department, Bihar, Patna.
- 5.The Chief Engineer, Water Resources Department, Bihar, Patna.
- 6.The Engineer-in-Chief, Building Construction Department, Bihar, Patna.
- 7.The Chief Engineer, Building Construction Department, Bihar, Patna.
- 8.The Superintending Engineer, Water Drainage Investigation Circle, Gandak Yojana, District Saran.
- 9.The Superintending Engineer, Building Construction Circle, Motihari, District East Champaran.
- 10.The Executive Engineer, Water Drainage Division, Siwan.
- 11.The Sub-Divisional Officer, Water Drainage Sub Division No. 2, Siwan.
- 12.The Junior Engineer, Water Drainage Division, siwan.
- 13.The Assistant Engineer, Water Drainage Division, siwan.
- 14.The Executive Engineer, Building Construction Division, Motihari, District East Champaran.
- 15.The Assistant Engineer, Building Construction Division, Motihari, District East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kr.Mishra, Adv

For the Respondent/s : Mr. Sanat Kumar Mishra AC to AAG-8

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 07-01-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

“For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to pay the amount in accordance with the work completed by the petitioner in terms of the agreement, which has

been completed by the petitioner in terms of the agreement, which has been completed by the petitioner for the Renovation/construction of new Nala of Belour-Jataur and Chakri Link Drain from 11.20 to 20.20. R.D. of Ghorī Nala against repairing work of C type quarter C-5 to C-23 at L.R.P. colony Motihari against contract No. F2 of 1992-93.

For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned that as the petitioner has completed the work in accordance with estimate/revised estimate and tender notice and as there is no fault on the part of the petitioner, but even after repeated representation till date the same has not been paid.

For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned for a declaration that as the petitioner has completed the Renovation/construction of new Nala of Belour-Jataur and Chakri Link Drain from 11.20 to 20.20. R.D. of Ghorī Nala against contract No. 3 F2 of 1990-91 and also the work of annual repairing work of C type quarter C-5 to C-23 at L.R.P. colony Motihari against contract No. 60 F2 of 1992-93 in accordance with agreement as per the tender notice.

For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to dispose of the representation of the petitioner by a reasoned order by any impartial officer who might redressed the genuine grievance of the petitioner without any biased or favour.

For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to pay the entire due amount for which the petitioner has completed the work in accordance with direction or amended estimate with interest at the market rate as there is no fault on the part of the petitioner and for the payment of the same the bill have already been checked and passed by the respondent authorities concerned.”



3. Mr. Umesh Kumar Mishra, learned counsel appearing on behalf of the petitioner in support of the aforementioned prayer has made a submission that the petitioner has completed the work and was entitled to get the full amount for the work done but the respondents have not got any valid reason for withholding such payment for a period of over six years.

4. In this case, counter affidavit has been filed way back on 11.05.2009 in which the respondents have taken a plea that not only the writ application seeks to raise a stale claim of 17 years back but the petitioner has already been paid whatever was due and admissible to him.

5. In this regard, learned counsel for the State has placed reliance on paragraph nos. 5 to 9 of the counter affidavit to contend that whatever has been prayed in respect of the agreement no. 3F is not admissible and payable to the petitioner which reads as follows:-

“That the prayer of the writ petitioner is to direct the respondents to make payments in terms of agreement no. 3F2 of 1990-91 for renovation work of

Belour-Jataur and Chakri Link Drain from 11.20 to 20.20 R.D., of Ghorī Nala. It is stated that for the said renovation work tender was issued and after considering the offer of different contractors, the petitioner was allotted the said work by the Superintending Engineer, Drainage Circle, Chapra vide letter no. 698 dated 6.6.1990. The total value of the said work was Rs. 107504.05.

That it is stated that as per the aforesaid agreement, the work allotted to the petitioner was required to be completed by 18.7.1990. But the petitioner could not complete the work within the stipulated period due to rainy season and delay in acquisition of some land. However, the part work done by the petitioner was measured and entered in the measurement book. The said work was valued to the tune of Rs. 10082/- and Rs. 8434/- which amount was paid to the petitioner vide 1st, 2nd and 3rd A/C bill.

That pursuant to request of the petitioner, the time for completion of the said work was extended to 31.3.1991 by the Executive Engineer, Drainage Division, Siwan vide letter no. 401 dated 12.3.1991. But even during this extended period the petitioner did not complete the said renovation work due to his own fault. However, the part work done by the petitioner was measured and entered in the measurement book. This work was valued to the tune of Rs. 8364/- and this amount was paid to the petitioner on 29.3.1991 vide 4th A/C bill. The petitioner has received total Rs. 26880/- for the actual work done by him and now nothing remained due against the department to the paid to the petitioner.

That on 15.6.97 the petitioner submitted a representation for closure of the agreement and refund of earnest money. On the same day he also gave a written undertaking that he will not make any claim for payment of any amount in regard to the aforesaid agreement if the earnest money is refunded to him. Considering the undertaking of the petitioner the earnest money was refunded to him on 16.7.97.

That the Executive Engineer, Saran Canal Division, Aander at Siwan has informed the Chief Engineer, Water Resources Department, Siwan vide letter no. 474 dated 27.12.2008 that the petitioner has been paid the entire amount for the part work done by



him in terms of the agreement no. 3F2 of 1990-91 and the earnest money has also been paid to him much earlier and the agreement was closed on his own request. As such now nothing remains due against the Department to be paid to the petitioner and the claim of the petitioner is baseless. AS per the agreement the petitioner had to perform desilting work of the canal and he was never required for canal cutting work nor any such assignment had been given to him or approved by the higher authorities."

6. Mr. Mishra in reply has submitted that the petitioner has an answer provided he is allowed to file reply to the counter affidavit. This Court however would refuse to accept such plea of the petitioner for a simple reason that the copy of the counter affidavit was served upon him on 11.05.2009 and if a period of more than four and a half years has not been sufficient for filing of the reply to the counter affidavit, no indulgence can be given now.

7. Thus the aforementioned uncontroverted statement of the respondents will only go to show that there is dispute which the petitioner wants to get settled in a writ jurisdiction that however, is not permissible specially when the matter relates to non statutory



contract. Reference in this connection may be judgment of Apex Court in the case of **Radhakrishna Agarwal & ors. v. State of Bihar & ors.**, reported in **AIR 1977 SC 1496** which has been followed by at least two Division Bench judgment of this Court in the case of **M/s BASF India Ltd. v. the State of Bihar & ors.**, reported in **1992(2) PLJR 714** and in the case of **M/s Patna Hume Pipes Manufacturing Company v. the State of Bihar & ors.**, reported in **1993(1) BLJR 600**, will itself make the writ application with regard to disputed money claim not maintainable.

8. Moreover once this Court would find that the claim of the petitioner is not only belated and in fact as on date a period of more than two decades has elapsed, it will have no difficulty in holding that such belated claim of the petitioner even otherwise can not be examined in writ jurisdiction on the settle principles of delay and laches.

9. That being so, this writ application fails, and

is, accordingly, dismissed.

10. Nothing said in this order, however, will come in the way of the petitioner in agitating his claim before the competent Civil Court.

(Mihir Kumar Jha, J)

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