

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1274 of 2017

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M/s Vasishta Construction Pvt. Ltd., having registered Office at Plot no.-23, Rao & raju Colony, Road No.-2, banjara Hills, Hyderabad having local Office at flat No.- 406, 4th Floor, Meerambika Apartment, Boring Road, Patna, Bihar through One of its Director, namely Sri M.S.K. Subba Raju, Son of Sri Surya Narayan Raju, resident of 38, Ashwani Layout, Jubilee Hills, Hyderabad.

.... Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Water Resources Department, Government of Bihar, Patna.
2. The Principal Secretary, Water Resources Department, Government of Bihar, Patna.
3. The Chief Engineer, Irrigation Creation, Water Resources Department, Bhagalpur, Bihar.
4. The Superintending Engineer, Irrigation Circle, Jamui, Bihar.
5. The Executive Engineer, Irrigation Division, Sikandra.
6. Vijeta Projects and Infrastructure Ltd. having Office at West Moradadi Maidan, Ranchi, Jharkhand through its Whole time Director Pancham Singh, Son of Not Known, C/o Vijeta Projects and Infrastructure Ltd.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Y.V. Giri, Sr. Adv.

Mr. Ashish Giri, Adv.

For the Respondent/s : Mr. Vikash Kumar-SC11

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 21-07-2017

Heard Mr. Y.V. Giri, learned senior counsel for the petitioner and learned counsel appearing on behalf of the State-respondents.



The grievance of the petitioner, in this application under Article 227 of the Constitution of India, is that the learned court below while admitting and issuing the notice to the respondents in Misc. (Arbitration) Case No. 123 of 2017 filed by the petitioner under Section 9 of the Arbitration & Conciliation Act, 1996 has failed to consider the relief as prayed for grant of interim protection to the petitioner and pass appropriate order thereupon.

Learned senior counsel for the petitioner, after elaborating the facts of the case in detail, has submitted that though the learned court below has noticed the prayer of the petitioner for grant of interim relief but has omitted to pass any order in that regard which clearly amounts to failure to exercise jurisdiction in the facts and circumstances. It has been contended that the dispossession of the petitioner from the work site including the materials thereupon will result in irreparable loss and injury to the petitioner. It has also been pointed out that no notice for cancellation of the contract as envisaged by clause 14 of the contract (Annexure-1) has been received by the petitioner and in fact the said contract has not been cancelled to the knowledge of the petitioner but subsequent contract (Annexure-16) has been executed by the respondents on 11.07.2017.

Learned counsel for the State-respondents while



resisting the assertions made on behalf of the petitioner has submitted that the petitioner has already been dispossessed from the work site and there is now no scope for grant of interim relief, as prayed. It has been emphasized that the notice for cancellation of the contract has already been issued to the petitioner and the cancellation order has also been passed. Learned counsel has also made submissions that the petitioner has not approached this Court with clean hands and the facts of the case itself show that substantial delay has already taken place in completion of the important work in question for the reasons directly attributable to the conduct of the petitioner.

After considering the submissions on behalf of the parties and the materials on record, this Court in the facts and circumstances and in view of the nature of the order being passed refrains from going into the merits of the rival assertions. However, from the order dated 10.07.2017 (Annexure-15) passed by the learned court below in Misc. (Arbitration) Case No. 123 of 2017, it is manifest that the prayer for grant of interim relief was indeed made by the petitioner but has not been considered by the learned court below. There is no reason assigned in the impugned order for non-consideration of the said relief. It is, therefore, beyond cavil that the learned court below has failed to exercise the jurisdiction.



Accordingly, this application is disposed of with direction to the learned court below to pass appropriate order in accordance with law on the prayer of the petitioner for grant of interim relief as made before it. Learned counsel for the parties has submitted that the learned court below be directed to hear the matter on 26.07.2017, and have jointly submitted that both the parties would be present on that date for hearing the matter on the issue of grant of interim relief. Keeping in view the nature of the dispute between the parties and the facts and circumstances of the case, the learned court below is directed to take up the Misc. (Arbitration) Case No. 123 of 2017 (M/s Vasishta Construction Pvt. Ltd. Vs. The State of Bihar & Others) on 26.07.2017 for considering the prayer for grant of interim relief as prayed by the petitioner and pass appropriate order in accordance with law.

Further this Court restrains the respondents from dispossessing the petitioner, if not already been dispossessed, from the work site and the materials thereupon till 26.07.2017.

It is clarified that this Court has not gone into the merits of the case of either of the parties and this order shall not prejudice the case of the parties either in any manner and the same shall be decided on its own merits in accordance with law.



Accordingly, this application is disposed of with the
above directions and observations.

(V. Nath, J)

Devendra/-

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