

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7494 of 2016

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Surendra Kumar Purbey Son of Late Sitaram Purvey, R/o Ward No. 11 Rosera
Nagar Panchayat, P.S. - Rosera, District - Samastipur.

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate, Samastipur.
2. The Sub- Divisional Officer, Rosera, District - Samastipur.
3. The Rosera Nagar Panchayat through its Executive Officer Rosera, District -
Samastipur.
4. The Executive Officer, Rosera Nagar Panchayat, Rosera, District - Samastipur,
Bihar.

.... Respondents

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Appearance :

For the Petitioner : Mr. Pramod Kumar Singh, Advocate

For the Respondent/State: Mr. - Anjani Kumar, AAG-6

For respondent no. 4 : Mr. Abhay Shankar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-10-2018

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for respondent nos. 3 and
4.

2. In the present writ petition, the petitioner has prayed
for directing the respondents to make payment of arrears of lease



rent of bus stand earlier being operated by the respondent authorities.

3. The case of the petitioner is that he and his two brothers had entered into an agreement of lease for five years on 29.04.2014 with Rosera Nagar Panchayat represented through its Executive Officer. Under the agreement of lease, he had agreed to give his land situated at Ward No. 13, Mohalla- Mahavir Asthan, P.S.-Rosera, District-Samastipur admeasuring 1 bigha for the purpose of bus stand for consideration amount of Rs.1,30,000/- as annual rent for first year and subsequent increase of 5 percent each year for the next four years. Subsequently, in view of aforesaid lease agreement dated 29.04.2014, the land was handed over to the respondent Nagar Panchayat and the bus stand started operating from May, 2014 itself. As per provisions of agreement, the respondent Rosera Nagar Panchayat was required to make payment of the lease rent at the time of start of lease period i.e. in the month of May, 2014, but no payment was made by respondent Nagar Parishad. Thereafter, he kept reminding Nagar Panchayat to make payment of lease rent amount. After much efforts, the Nagar Panchayat made payment of Rs.98743/- only vide cheque dated 07.01.2015 which includes arrears of rent of previous lease period



from December, 2013 to April, 2014. Thus, in effect, Nagar Panchayat made payment of Rs.41,142/- as rent for the period from December, 2013 to April 2014 and only Rs.57,601/- has been paid against the rent for lease period starting from May, 2014.

4. Learned counsel for the petitioner submitted that annual lease rent at the agreed rate of Rs.1,30,000/- from May, 2014 was not paid at the start of lease period as per agreement. He has further submitted that despite repeated reminders, respondent Nagar Panchayat has failed to make payment of the arrears of rent.

5. On the other hand, learned counsel appearing for respondent nos. 3 and 4 submitted that the bus stand was being operated on the leased premises of the petitioner upto 31st March, 2015 and, subsequently, with effect from 01.04.2015 it had been shifted to new location considering traffic problems, convenience and connectivity from the highways. The rent of erstwhile bus stand of Rs.98,743/- was already paid to the petitioner for the period of 28.11.2013 to 27.11.2014 and further for the period since 28.11.2014 to 31.03.2015 a sum of Rs.35,396/- was payable as arrears of rent and the same has also been subsequently paid.

6. He further contended that there is no other legal dues of the petitioner which fact has been disputed by the learned



counsel for the petitioner.

7. Admittedly, the writ petition has been filed seeking direction for payment of contractual claim. In my opinion, a writ petition for payment of lease amount is not maintainable. For such a claim, the appropriate remedy is to file a suit.

8. The Supreme Court in **Jagdish Mandal vs. State of Orissa [(2007) 14 SCC 517]** held that the power of judicial review will not be permitted to be invoked to private interest or to decide contractual disputes. It was further held that a writ petition in contractual matters would be entertained only if there is an element of public interest in litigation. No such element of public interest is found in the instant case.

9. In **Kishan Shahkari Chini Mills Ltd. vs. Vardan Linkers [AIR 2008 SC 2160]**, the Supreme Court reiterated that public law remedy under Article 226 of the Constitution of India is not available to seek damages for breach of contract, or specific performance of contract unless the contractual dispute has a public law element.

10. In view of the aforestated ratio laid down by the Supreme Court, the writ petition seeking direction for payment of contractual claim is dismissed with liberty to the petitioner that if



so advised, he may seek his remedy under the civil law before the civil court of competent jurisdiction.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.10.2018
Transmission Date	NA

