

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.121 of 2015

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M/s Ram Lakhan Properties and Assets Pvt. Ltd. through its Rajan Kumar Jaishwal R/o Dhaka Road, opposite Central Bank Chhatauni, Motihari, East Champaran

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary, Rural Works Department, Vishweshwariya Bhawan, Bailey Road, Patna
2. The Engineer-in-Chief, Rural Works Department, Vishweshwariya Bhawan, Bailey Road, Patna
3. The Chief Engineer-III, Rural Works Department, Vishweshwariya Bhawan, Bailey Road, Patna
4. The Superintending Engineer, Rural Works Department, Work Circle Sitamarhi at Sitamarhi
5. The Executive Engineer, Rural Works Department, Work Division, Sheohar at Sheohar
6. The Assistant Engineer, Rural Works Department, Work Division, Sheohar at Sheohar
7. The Junior Engineer, Rural Works Department, Work Division, Sheohar At Sheoar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Singh
For the Respondent/s : Mr.Dhurjati Kr Prasad

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 15-04-2019

Heard parties.

This revision petition has been filed for setting aside the Award dated 17.08.2015 passed by the Bihar Public Works Contract Disputes Arbitration Tribunal, Patna in Reference Case No.5/2014 by which petitioner has been directed to repair 500 meter of road which was found to be substandard and although petitioner was given opportunity to rectify it by letter dated 09.06.2012. but still same was not rectified, hence, the claim of



payment of Rs.4,13,277/- was denied.

Petitioner had filed Reference Case No.5/2014 for payment of Rs.4,13,277/- which was not paid even after completion of work within stipulate time. Petitioner has further submitted claim for refund of earnest / security money which was not refunded to him after completion of contract.

Agreement dated 03.03.2012 was entered between Executive Engineer, Rural Works Department, Sheohar for maintenance of road between Sheohar to Bisahi at the estimated cost of Rs.21,24,347/-, petitioner deposited earnest money of Rs.1,08,000/- and time for completion of contract was six months. It was contended on behalf of the petitioner that he completed the allotted work within time and petitioner gave an application for final inspection and measurement of completed work and for payment of the contract amount. After completion of the work, petitioner was paid Rs.9,58,723/- against the work done of Rs.13,72,000/-. The quality of work was found to be as per specification. The Executive Engineer by letter dated 30.05.2012 send requisition for release of fund and fund was also released and petitioner was informed about release of fund and payment by letter dated 27.1.2013 but still after much time due amount of Rs.4,13,277/- was not paid.



Counter affidavit was filed on behalf of the opposite parties in which a stand was taken that petitioner had completed his contractual work and on inspection made in May 2012, 500 meter of premixing work was found substandard and petitioner was asked to rectify the same vide letter dated 9.6.2012 for full payment. In support of the said contention, a reference has been given to a letter no.4 dated 09.06.2012 issued by the Executive Engineer, Rural Works Department, work division, Sheohar by which petitioner was directed to rectify his substandard premixing work measuring 500 meter in terms of the agreement.

It has been submitted on behalf of the petitioner that he had no knowledge about the submission made in counter affidavit that inspection was done by Executive Engineer or issuance of letter no.5 dated 9.6.2012 to rectify the substandard work. Petitioner applied for a copy of "issue register" of the year 2012 and 2013 through RTI and same has been supplied to petitioner and it appears from the perusal of the issue register, letter no.4 was issued on 27.1.2013 and thereafter letter no.5 was issued on 8.6.2012 and letter no.6 was issued on 23.8.2012 which cannot be accepted as same are subsequent to letter no.4 dated 27.1.2013 which creates doubt about the authenticity of



letters. It has been emphatically denied by petitioner of receiving any letter dated 9.6.2012, 23.8.2012 or 27.1.2013 and same were manufactured to deny claim of petitioner. This Court in its order dated 21.09.2017 noted down the submission made on behalf of the petitioner and same is being reproduced below:-

“Heard the parties.

Learned counsel for the petitioner having relied upon Annexure-8, the photostat copy of issue register, submits that vide serial no. 4 of the aforesaid issue register one letter on 27.01.2013 was issued regarding the completion of work and payment of petitioner but subsequently, the concerned officials made interpolation in the aforesaid issue register and got prepared a forged letter which was entered at serial no. 5 and on the basis of aforesaid letter, the officials claimed that inspection regarding the work of the petitioner was made and petitioner was directed to rectify substandard work which had not been rectified by the petitioner and on that ground, the department stopped payment of the petitioner.

Although, counter affidavit has been filed on behalf of the opposite parties but nothing has been stated regarding the aforesaid submission of the petitioner.

Therefore, in the aforesaid circumstance,



learned counsel for the opposite parties is directed to produce original issue register (Annexure-8) before this court positively within four weeks after Durga Puja holidays.

List this matter after four weeks of Durga Puja holidays.”

Tribunal has rejected the claim of the petitioner on the basis of letter no.5 dated 8.6.2012 issued by the Assistant Engineer, Sheohar by which petitioner was directed to rectify the work. Learned counsel for the petitioner has stated that he had never received such letter and to verify the truthfulness of the submission made by the opposite parties, this Court had called for original issue register from the Department and on perusal of which, it appears that interpolation overwriting was made in the issue register against serial no.4 which lends support to the allegation made by petitioner. Information received by petitioner under RTI Act which has been enclosed as date of issue of letter no.4 is 27.1.2013 and subsequent letter at Serial No.5 is dated 8.6.2012 date of which is prior to issuance of date of letter at serial no.4 which supports the contention of the petitioner that letter at serial no.5 dated 8.6.2012 was never issued to him and was subsequently added in the issue register to deny the claim of petitioner. The Tribunal has also not given any finding with respect to claim of petitioner



with regard to refund of his earnest money/security money as such matter is remanded back to the Tribunal to give its finding after considering the argument and evidence adduced by both the parties with respect to genuinity and authenticity of letter no.5 dated 8.6.2012 and subsequent letters issued by the Department. If Tribunal comes to conclusion that forgery/interpolation has been made in issue register then Tribunal will direct Vigilance Department to institute criminal case against persons responsible.

Let the original issue register produced on behalf of the Department be handed over to the learned counsel appearing on behalf of the State. A photo copy of relevant page of issue register be kept on record.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.04.2019
Transmission Date	NA

