

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CIVIL WRIT JURISDICTION CASE No. 5625 of 2020**

Bhawana Infrabuild Pvt. Ltd. R/o. A-51, Hatwa Raj Ganga, J.C. Road, Patna, Bihar through its Chief Managing Director Sushil Kumar Singh, aged about 43 years, Male, son of Punyadeo Narayan Singh, residing at Flat No. 102, Sunrise Rukmini Place Apartment, Magistrate Colony, Kailash Path, P.S. Rajeev Nagar, District- Patna, Bihar. **PETITIONER.**

VERSUS

1. The State of Bihar through Principal Secretary, Urban Development Department, Bihar, Patna.
 2. The Principal Secretary, Urban Development Department, Bihar, Patna.
 3. The Patna Municipal Corporation through Municipal Commissioner, Maurya Lok Complex, Buddh Marg, Patna.
 4. The Municipal Commissioner, Patna Municipal Corporation, Maurya Lok Complex, Buddh Marg, Patna.
 5. Patna Smart City Limited through its Managing Director cum- Municipal Commissioner, Maurya Lok Complex, Buddh Marg, Patna.
 6. The Managing Director, PSCL – cum – Municipal Commissioner, Patna Municipal Corporation, Maurya Lok Complex, Budh Marg, Patna.
 7. UCO Bank through Branch Manager, Kankarbagh Branch, P.S. Kankarbagh, District- Patna.
 8. Sumit Jhunjhunbala, Chief Finance Officer, Patna Smart City Limited, 5th Floor, Biscomaun Tower, P.S. Gandhi Maidan, District- Patna.
-**RESPONDENTS.**

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the Opposite Party/s : Mr. Nadeem Seraj, G.P. 5

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

4 21-05-2020 This writ application has been placed before this
Court today for hearing through Video Conferencing by the



order of Hon'ble the Chief Justice.

Heard learned counsel for the petitioner and learned counsel for the State.

The Registry has pointed out certain defects in the writ application, however, because of the on-going lockdown in the country, those defects have not been cured. Learned counsel for the petitioner states that in paragraph '41' of the writ application the petitioner has specifically undertaken to deposit the required court fee and file the hard copy of the writ application along with its annexures after affidaviting the same once the Hon'ble High Court starts functioning in regular manner.

Learned counsel for the petitioner undertakes to do so and comply with all requirements within three weeks after opening of the Hon'ble High Court in regular manner.

The petitioner has moved this Court seeking following reliefs:

"i. For issuance of an appropriate writ/s, order/s, Direction/s to the respondents for quashing letter No. 2062 dated 14.03.2020 and letter No. 2090 dated 20.03.2020 issued by the respondent no. 6 whereby and under the contract awarded to the petitioner on 18.05.2019 for construction of redevelopment of Bakarganj Nala under Smart City Mission for Patna has been terminated in full and



his bank guarantee no. 15571GPER 000319 dated 26.04.2019 to the tune of Rs. 76,35,000.000 has been forfeited and the concern bank has been directed to remit the said amount.

ii. For issuance of an appropriate writ/s, order/s, Direction/s to the respondents bank not to remit the amount of bank guarantee to the tune of Rs. 76,35,000.000 to the Respondent Managing Director, PSCL pursuant to his letter dated 20.03.2020 till lis is decided.

iii. For issuance of an appropriate writ/s, order/s, Direction/s to the respondents for directing the respondent bank not to realized the amount of Bank Guarantee which has been remitted by the bank on 09.04.2020 from the petitioner till the lis is pending and the period of Lockdown comes to an end because the petitioner has already intimated the bank from his letter dated 23.03.2020 and 28.03.2020 sent through E-mail and to prohibit the bank from issuing any notice auction of property situated at Motihari, Mortgaged at the time of bank guarantee, which was visited by the bank officials on 21.04.2020 for its assessment and valuation.

iv. To pass such other order/orders as your Lordship may deem fit and proper in the facts and circumstances of this case.”

In course of argument learned counsel for the petitioner admits that the contract in question contains an arbitration clause, therefore, the petitioner has got an equally efficacious and alternative remedy of going in arbitration against the order of termination of contract, forfeiture of



performance guarantee and encashment of bank guarantee.

Learned counsel submits that in almost similar circumstance wherein the Bank had already encashed the bank guarantee, this Court had occasion to consider C.W.J.C. No. 5637 of 2020 between the same parties and the said writ application was disposed of vide order dated 06.05.2020 giving liberty to the petitioner to seek it's remedy before the Arbitral Tribunal. Similar relief has been prayed in the present circumstance and learned counsel submits that this writ application may also be disposed of in the manner earlier C.W.J.C. No. 5637 of 2020 was disposed of by this Court.

Once again, learned counsel for the petitioner has drawn attention of this Court towards the proposed action of the Bank (respondent no. 7) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act 2002') but save and except a mere statement in the writ application, for the present there is no material on the record to show that the Bank has proceeded with any action under the SARFAESI Act, 2002. Learned counsel for the petitioner has, thus, submitted that this Court may grant liberty to the petitioner that as and when the Bank (respondent no. 7) initiates any action



against the mortgaged property, the petitioner will be at liberty to seek his remedy in accordance with law. In the earlier writ application also, it is submitted that a similar view was taken by this Court.

Mr. Nadim Seraj, learned GP 5 has appeared in this case on behalf of the State. Respondent no. '5' and respondent no. '7' are though not represented, it is submitted by learned GP-5 that if the writ application is disposed of in terms of the order dated 06.05.2020 passed in C.W.J.C. No. 5637 of 2020 neither party will have any prejudice.

With the consent of the parties, therefore, this Court is disposing of this writ application granting liberty to the petitioner to seek his remedy against the order of termination of contract, forfeiture of performance guarantee and encashment of bank guarantee before a duly constituted Arbitral Tribunal in terms of the arbitration clause which is admittedly there in the contract. As regards the proposed action against the mortgaged property is concerned, for the present this Court finds no reason to take any view on that issue as there is nothing on the record to show that the Bank has proceeded with any coercive measure against the mortgaged property. The Court would only observe that in case the Bank proceeds to take any action against the



mortgaged property, it will be open for the petitioner to move before an appropriate court/forum/tribunal seeking his remedy in accordance with law.

This writ application, thus, disposed of in the aforesaid terms.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

