IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CIVIL WRIT JURISDICTION CASE No. 5637 of 2020

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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.

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

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 06-05-2020 This writ application has been placed for consideration through Video Conferencing from the residential Chamber by the order of Hon'ble the Chief Justice.

Mr. Sanjay Kumar, learned counsel for the petitioner represents the petitioner. Mr. Nadeem Seraj, learned counsel appears on behalf of 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 '31' 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 State has informed this Court that although the copy of the writ application has been served upon the office of the learned Advocate General but the annexures of the writ application have not been received, therefore, it has been submitted that learned counsel for the petitioner should also undertake to serve the complete hard copy of the writ application with all annexures after 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.

Learned counsel for the State has informed this Court that Mr. Lalit Kishore, learned Senior Advocate normally represents Patna Smart City Limited (Respondent No. 5). Today, learned counsel for the respondent no. '5' and the UCO Bank (Respondent No. 7) are not participating through video conferencing.

Learned counsel for the petitioner has informed that copy of the writ application has already been sent through email to both respondent nos. '5' and '7'.

Bet that as it may, in view of the urgency pleaded by learned counsel for the petitioner, this Court has taken up the matter for consideration. In this writ application the petitioner is praying for the following reliefs:

> "i. For issuance of an appropriate writ/s, order/s, Direction/s to the respondents for quashing letter No. 2117 dated 08.04.2020 issued by the respondent no. 6 whereby and under the contract awarded to the petitioner on 12.06.2019 for construction of integrated command control centre (ICCC in short) building in SSP office, Patna has been terminated in full and his bank guarantee no.

15571 GTER 000419 dated 26.04.2019 to the tune of Rs. 69,86,465.00 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. 69,86,465.00 to the Respondent Managing Director, PSCL pursuant to his letter dated 08.04.2020 till lis is decided.

iii. For issuance of an appropriate writ/s, order/s, Direction/s to the respondents the bank guarantee remitted to the respondent Managing Director, PSCL on 20.04.2020 may not be realized by the bank till lis is pending before this Hon'ble Court because the bank official visited the mortgaged property at Motihari on 21.04.2020 for its assessment and valuation for auction.

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

It is the contention of Mr. Sanjay Kumar, learned counsel for the petitioner that the respondent no. '5' has terminated the contract without giving any opportunity to show cause to the petitioner. Learned counsel further submits that during the lockdown period respondent no. '5' has acted unfairly in invoking the bank guarantee of Rs. 69,86,465/- which was furnished by the petitioner towards performance guarantee.

Learned counsel has pointed out from the statements made in the writ application that there is a biased role of respondent no. ‘8’ who is sitting as Chief Finance Officer of Patna Smart City Limited. It has been submitted that there had been defaults on the part of the respondent no. ‘5’ as respondent no. ‘5’ failed to give structural design of the building, however, the contract was terminated and bank guarantee has been encashed.

In paragraph ‘27’ it has been stated that the Bank has already remitted the amount of the bank guarantee to the Managing Director, Patna Smart City Limited-cum- Municipal Commissioner, Patna Municipal Corporation (Respondent No. 6). Learned counsel submits that at this stage he had moved this Court praying for an interim order staying the invocation of the bank guarantee and also for a direction to the UCO Bank (respondent no. 7) not to take any coercive action towards auction of the residential house of the petitioner situated at Motihari which had been mortgaged to the Bank as a security while obtaining the bank guarantee. A statement has been made in paragraph ‘28’ of the writ application that the officials of the Bank visited the residential property of the petitioner situated at Motihari for an assessment of valuation and according to the petitioner his residential house is likely to be auction sold. Thus, prayer for interim relief has also been made for restraining any coercive action from the Bank.

Mr. Nadeem Seraj, learned counsel representing the State submits that the petitioner is aggrieved by the action terminating his contract leading to encashment of the bank guarantee, the petitioner may approach the learned Arbitrator in terms of the contract. It is further submitted that so far as the prayer to stay the invocation of the bank guarantee is concerned, the same has become infructuous inasmuch as the bank guarantee has already been encashed, the Bank has honoured the bank guarantee and now there cannot be any stay on the invocation of the same.

As regards the prayer of the petitioner to direct the Bank not to take any coercive action with regard to mortgaged property, it has been submitted that the statement made in the writ application is not having any basis and there is no material on the record to show that the Bank has proceeded to take action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Learned counsel submits that at present the prayer to direct the Bank not to take any action with regard to mortgaged property is premature.

Having heard learned counsel for the petitioner and the State, this Court is of the considered opinion that keeping the writ application pending at this stage shall serve no purpose and in the nature of the order the Court proposes to pass even though respondent no. '5' and respondent no. '7' are not represented they are not going to be affected by this order.

Learned counsel for the petitioner has admitted in course of argument that the contract in question contains an arbitration clause, hence, against the order terminating the contract leading to encashment of the bank guarantee, the petitioner has got an equally efficacious statutory /contractual, as the case may be, alternative remedy of approaching the Arbitral Tribunal for redressal of his grievance. This Court, thus, is of the considered opinion that the writ application need not be entertained as regards the first prayer seeking interference with the order of termination. It is, however, left open for the petitioner to approach the appropriate forum for redressal of his grievance particularly in terms of the arbitration clause.

As regards the second prayer looking for staying the invocation of the bank guarantee, again this Court is inclined to agree with the submission of learned counsel for the State that once the bank guarantee has already been invoked and the same has been honoured by the Bank, the prayer in this regard has become infructuous. Whether the encashment of bank guarantee was rightly or wrongly done, primarily it is a matter attached to the adjudication of disputes by the appropriate forum while considering the challenge to the order of termination of contract. Thus, this issue is also left open for the petitioner to agitate before the appropriate forum.

So far as the third prayer is concerned, in the whole writ application, this Court finds no basis to accept the submission of learned counsel for the petitioner that the Bank is going to auction sale the residential house of the petitioner situated at Motihari during this lockdown. Learned counsel has accepted in course of argument that till date the petitioner has not received any letter / notice disclosing the intention of the Bank to auction sale the residential house of the petitioner. It has also been accepted that auction sale of the mortgaged property would definitely require some procedures to be followed by the Bank and it will take some time even after such action is envisaged at the end of the Bank. Thus, at this stage, this Court finds no reason to pass any interim order issuing any direction to the Bank (Respondent No. 7).

In case the Bank proceeds to auction sale the property in question, the petitioner will be at liberty to seek his remedy before appropriate forum in accordance with law.

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

(Rajeev Ranjan Prasad, J)

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Note: This is certified to be the true typed copy of the original. Original signed copy of the order has been kept in the Residential office of the Hon’ble Judge.