

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7699 of 2022

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Pramod Kumar S/o Jitendra Singh, R/o Temple. Sonbhadra, P.S.- Banshi,
District- Arwal, 804419

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The District Magistrate, Arwal, Bihar.
3. The Deputy Development Commissioner, Arwal, Bihar.
4. The Executive Officer, Municipal Council, Arwal, Bihar.
5. Anupa Kumari D/o- Late Laxmi Narayan Gupta, Arwal Municipal Office, Arwal, 804401.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vikash Kumar, Adv.
For the Respondent/s : Mr. Subhash Prasad Singh (GA 3)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 29-07-2022

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Municipal
Council, Arwal.

2. In the present application, the petitioner has sought
for the following reliefs :-

- (i) To issue a writ in the nature of mandamus or any other appropriate Writ(s), Order(s), Direction(s) quashing and setting aside the impugned order in communication no. 136 & 231 each respectively dated 04.02.2022 and 22.02.2022 passed by respondent no.4.



(ii) To issue a writ in the nature of mandamus or any other appropriate Writ(s), Order(s), Direction(s) to order the respondents to compensate for the damages suffered by the petitioner to the tune of 6,00,000 INR.

(iii) To issue a writ in the nature of mandamus or any other appropriate Writ(s), Order(s), Direction(s) to order the respondents to desist from awarding the contract to another person/entity before disposal of this writ petition.

(iv) To extend the term of contract with rights restored in petitioner under the terms of contract to compensate for the loss suffered by the petitioner due to illegal termination of contract.

(v) To declare para 10 & 11 of the Ekrarnama as unreasonable and arbitrary and hence unenforceable.

(vi) To impose cost on respondent no.5 and award the legal costs amounting to 2,00,000 INR incurred by the petitioner.

3. In brief the case of the petitioner is that he had entered into an agreement with the respondent no.4 on 04.03.2021 whereby he had got the right to collect entry fees from commercial vehicles entering the Arwal Nagar Parishad area between 01.04.2021 and 31.03.2022. The agreement was made with him as he was the highest bidder. On 04.02.2022, the respondent no.4 without providing any opportunity to the petitioner cancelled the



agreement citing the reason as 'violation of the terms and conditions of the agreement'.

4. The further case of the petitioner is that he had not violated any of the conditions of the agreement and the impugned action of the respondent no.4 whereby the agreement was cancelled is wholly arbitrary as a result of which the petitioner has incurred loss of Rs. 26 lakhs for which he is entitled to be compensated.

5. Learned counsel for the petitioner submitted that the petitioner had made a formal application under Section 80(2) of the Code of Civil Procedure before the court of Sub-Judge-I, Arwal seeking leave of the court to file suit without serving any notice as required under Section 80(1) of the Code of Civil Procedure, but the same was rejected on 14.03.2022. He contended that against the arbitrary action of the respondents, the petitioner has no other efficacious remedy. Hence, he has filed the present writ petition.

6. In the opinion of this Court, the writ petition is thoroughly misconceived. The agreement executed between the petitioner and the Executive Officer, Nagar Parishad has been brought on record and marked as Annexure-1 to the present application. Clause (10) of the agreement confers right to the



respondents no. 4 to cancel the agreement and enter into settlement with anyone else in case the petitioner violates the terms and conditions of the agreement. Further, clause (14) of the agreement stipulates that in case of dispute the parties hereby agree that the dispute shall be subject to the jurisdiction of the Court at Arwal. In terms of the agreement, the petitioner did approach the civil court at Arwal after the dispute had arisen by filing an application under Section 80(2) of the Code of Civil Procedure. It is only after the sub-Judge-I rejected the prayer of the petitioner whereby he had sought leave to file suit without serving any notice as required under Section 80(1) of the Code of Civil Procedure, the instant application has been filed before this Court.

7. It is well settled that in a case arising out of a non-statutory contract rights and liabilities of the parties are governed by the terms of the contract. In case of any dispute, the remedy of Article 226 would not be open in such disputes.

8. Moreover, the petitioner cannot be allowed to agitate the matter before this Court under Article 226 of the Constitution, as the contract itself provides for a mode of settlement of disputes arising from the contract. There is no reason why the petitioner should not follow and adopt the remedy mentioned under the agreement and invoke the extraordinary jurisdiction of this Court.



9. For the reasons stated, hereinabove, we are not inclined to entertain the present application.
10. The writ petition is dismissed, accordingly.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.08.2022
Transmission Date	

