

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7790 of 2023

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Md. Tarique Anwar Son of Md. Jalaluddin Resident of Village- Kanhaipur,
Police Station- Mokama, District- Patna, Presently residing at New Azimabad
Colony, Police Station- Sultanganj, District- Patna ... Petitioner

Versus

1. The State of Bihar through, the Principal Secretary, Minority Welfare Department, Govt. of Bihar, Patna.
2. The Managing Director Bihar State Building Construction Corporation Ltd. Patna Shastri Nagar, Patna.
3. The Chief General Manager, Bihar State Building Construction Corporation Ltd. Patna Shastrinagar, Patna.
4. The Deputy General Manager, Bihar State Building Construction Corporation Ltd. Patna Shastri Nagar, Patna.
5. The Bihar State Sunni Wakf Board, I Ali Imam Path Haj Bhawan, Patna, through Sri Khursheed Anwar Siddiqui, its Chief Executive Officer.

... Respondents

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Appearance :

For the Petitioner	:	Mr.Sanjay Kumar, Adv.
For the State	:	Mr.Sita Ram Yadav, GP XVI
For the Board	:	M/s Md. Helal Ahmad & Rupesh Kr., Adv.
For the Corporation	:	Mr. Tej Bahadur Singh, Sr. Adv. with Mr. B.S. Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

5 12-09-2023 Heard learned counsel for the parties.

2. The present Writ Petition is filed for the following

relief(s) :

“..... for issuance of an appropriate writ/writs, order/orders, direction/directions for payment of admitted dues to the petitioner of sum of Rs.4,48,86,701/- (Four Crore Forty Eight Lakhs Eighty Six Thousand Seven Hundred One only) for construction of G+3 Multi Purpose Waqf Building near Hajrat Saiyyed Gulampir Muradsah Waqf State No. 663, Patna High Court under scheme of State Waqf Development.

The petitioner further prays for quashing of communication dated 30.11.2021 (Annexure -12)



made by Respondent No. 2, Managing Director, Bihar State Building Construction Corporation Ltd. Patna Shastri Nagar, Patna by which the representation made by the petitioner have been rejected. However, the said representation was made in the light of direction issued by the Hon'ble Court dated 21.09.2021 in C.W.J.C. No. 15039 of 2021."

3. Learned counsel appearing on behalf of the petitioner states that the petitioner is the registered Government contractor and pursuant to the tender published by the Respondent No. 2 for construction of a multi storeyed Waqf Bhawan has participated in the tender. That the petitioner's tender was accepted and an agreement was executed between the parties bearing Agreement No. 25BD/2020-21 on 24.06.2020. Thereafter, the petitioner was directed to deposit an amount of Rs.45,45,000/- as additional performance guarantee vide letter bearing No. 372, dated 17.03.2022, and the petitioner has deposited the said additional amount on 01.06.2020. That the provisional work order was issued by the Chief General Manager, Bihar State Building Construction Corporation Ltd., Patna Shastrinagar, Patna (Respondent No. 3), vide Letter No. 1054, dated 22.06.2020. That the petitioner has deposited an earnest money (EMD) of 2%, i.e., Rs.23,32,000/- of the agreed contracted amount of Rs.11,98,89,836/-. That when the petitioner wanted to start the work there were hindrances in



executing the work due to the encroachment of the subject site, which had to be removed and also due to a 11 KV underground cable and open electricity wires passing through the said area. The petitioner took steps with the Electricity Department to remove the underground cable and open wires by paying the requisite amount. The petitioner as per the terms and conditions of the agreement has completed 80% of the work as on date. During the execution of the work, the petitioner was paid the 1st and 2nd bills, total amounting to Rs.2,07,55,941/-. Learned counsel has stated that while the work was being executed by the petitioner, the Hon'ble Patna High Court had taken a Suo Moto case PIL numbered as C.W.J.C. No. 6751 of 2021 and an interim order was passed stopping further construction in the site. The above Writ Petition was finally disposed off on 03.08.2021 holding that the building which was constructed is in violation of the Building Bye Laws and directed for demolition of the building. Thereafter, the State of Bihar has moved the Hon'ble Supreme Court by way of SLP bearing Special Leave to Appeal(C) No(s). 12869 of 2021 and the Hon'ble Supreme Court vide order, dated 31.08.2021 has passed an order directing the parties to maintain the status quo with regard to the construction. Learned counsel has stated that



during the pendency of the C.W.J.C. No. 67519 of 2021 before this Hon'ble Court the authorities have issued a letter, dated 02.03.2021, directing the petitioner to stop the work, therefore, the petitioner could not complete the construction. Learned counsel has stated that though the petitioner has completed 80% of the work and submitted the bills to the authorities for payment of the same, the authorities are not paying the amount on one pretext or the other. Further, it is stated that the petitioner is facing huge financial loss due to the non-payment to the bills submitted by him. Learned counsel has stated that only on the ground on which the petitioner is being denied the payment of the bill amounts due is on the ground that the matter is subjudice before the Hon'ble Supreme Court and the order of status quo granted in the SLP. Learned counsel has stated that the petitioner cannot be penalized for the lapses, if any, made by the authorities. Learned counsel has prayed this Hon'ble Court to allow the present Writ Petition directing the respondents to pay the amount due.

4. In the counter affidavit filed by the respondents various contentions made by the petitioner with regard to the floating of the tender, the agreement entered between the parties and the construction made by the petitioner has not been denied.



The fact that this Hon'ble Court in C.W.J.C. No. 6751 of 2021 has stayed the further construction of the building has also not been denied and the final orders holding that the building in question is not in accordance with the provisions of the Building Rules and Bye Laws and order for demolition has being passed, has also not been denied. The only ground on which the authorities are not paying the bill submitted by the petitioner is on the ground that the State of Bihar has approached the Hon'ble Supreme Court against the orders of the Hon'ble High Court of Patna passed in C.W.J.C. No. 6751 of 2021 and the Hon'ble Supreme Court vide order, dated 31.08.2021 has passed the interim order directing the "parties to maintain status quo with regard to the construction and status of the site in question no construction, alteration of any kind shall be effected". In the counter affidavit filed by the respondents it is stated that due to the status quo order passed by the Hon'ble Supreme Court, the measurement of the work done by the petitioner and the quality thereof could not be ascertained. In the counter affidavit filed by the Respondent No. 5 while not denying the above mentioned facts it is admitted that the Respondent No. 5 has already released an amount of rupees five crores in two installments, i.e., Rs.2,50,00,000/- through Cheque No. 000306



and Rs.2,50,00,000/- through Cheque No. 000313 to the authorities for construction of the building. Learned counsel appearing on behalf of the respondents has stated that due to the status quo order passed by the Hon'ble Supreme Court the amounts due to the petitioner are not being paid.

5. Admittedly, in the present case, the petitioner had participated in the open tender process floated by the authorities concerned, the petitioner being the lowest bidder was entrusted with the contract for construction of the building and the agreement has been entered between the parties. The fact that the petitioner has completed 80% of the work has not been denied by the authorities concerned. The only ostensible reason for not paying the amounts due to the petitioner is order of the status quo granted by the Hon'ble Supreme Court in Special Leave to Appeal(C) No(s). 12869 of 2021 filed against the judgment of this Court in C.W.J.C. No. 6751 of 2021.

6. A perusal of the interim order passed by the Hon'ble Supreme Court in Special Leave to Appeal(C) No(s). 12869 of 2021 reads as under :

“Pending further consideration, the effect and operation of the order passed by the High Court shall be stayed. The parties shall maintain status quo with regard to the construction and the status of the site in question. No construction/alteration or any kind shall be effected. Any infraction shall



entail in serious consequences.”

7. The above order of status quo passed by the Hon'ble Supreme Court is with respect to the construction made and not with regard to the payment of the amount due to the petitioner. The order of the Hon'ble Supreme Court does not in any manner restrict the authorities from making payment to the petitioner for the constructions already made. The ground taken by the authorities for not paying the amounts due to the petitioner is not legally tenable and the same is to be deprecated. The authorities having extracted the work are not expected to take frivolous and legally untenable grounds for denying the payment for the construction already made. Any lapses committed while making the construction of the building at the subject site is due to the negligence of the authorities for which the contractor cannot be blamed. The petitioner cannot be faulted with or penalized for the actions of the official respondents.

8. Having regard to the fact that the petitioner already completed the civil work as per the terms and conditions of the agreement entered between the parties, the authorities concerned are directed to make the payment of the amount due to the petitioner as expeditiously as possible preferably within a period



of eight weeks from the date of receipt of a copy of this order. It is needless to mention that any amount paid to the petitioner shall be subject to the result of the final orders passed in the Special Leave to Appeal(C) No(s). 12869 of 2021 pending before the Hon'ble Supreme Court.

9. With the above directions, this Writ Petition is **allowed** to the extent indicated.

(A. Abhishek Reddy , J)

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