

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.543 of 2023

In
Civil Writ Jurisdiction Case No.17482 of 2021

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Md. Shamim, Son of Md. Salim, Resident of Ward No. 18, Mohalla- Urdu, P.O. and P.S.- Sherghati, District- Gaya.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Commissioner, Gaya Division, Gaya.
3. The District Magistrate, Gaya.
4. The Senior Superintendent of Police, Gaya.
5. The City Superintendent of Police, Gaya.
6. The Chief Councillor, Nagar Panchayat, (Now Nagar Parishad) Sherghati.
7. The S.D.O., Sherghati.
8. The Executive Officer, Nagar Parishad, Sherghati.
9. Officer-In-Charge, Sherghati.
10. Anchal Adhikari, Sherghati.
11. Ahmad Aslam, Son of Late Hakim Ahmad Shoaib, Resident of Mohalla- Qazi, P.S. Sherghati, District- Gaya.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Arun Kumar Tiwari, Advocate Mr. Pawan Kumar Verma, Advocate
For the Respondent/s	:	Mr. Yogendra Pd.Sinha, AAG-7

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-08-2023

The appellant is a respondent in the writ petition, who took out a contract for cleaning a drainage. In the process, it was alleged by the petitioner in the writ petition that his house was completely demolished. It is submitted by the learned counsel for the appellant that the house was only partly demolished. In any event, the writ petitioner came before this Court claiming



damages from the local body, under whose award the appellant-contractor had carried out the works, which resulted in the damage caused to the building. Before the writ Court, the Nagar Parishad, Sherghati, Gaya produced a cheque for Rs.8,81,774/- drawn in favour of the petitioner, which was handed over to the learned counsel for the petitioner and the petitioner's satisfaction was recorded. The learned counsel for the Nagar Parishad then requested liberty to recover the said amount from the defaulter/concerned contractor in accordance with law. The same was granted by the writ Court, against which the present appeal is filed.

2. We have heard the learned counsel for the appellant, who was the eleventh respondent before the writ Court, the learned counsel appearing for the Nagar Parishad and also the learned Government Advocate.

3. The learned counsel for the appellant would specifically point to Annexure-9, a document which indicates that the writ petitioner had received Rs.3 lacs in the police station in the presence of four witnesses, which document was produced by the writ petitioner himself in the writ petition. It is submitted that the petitioner was not heard, when the writ petition was disposed of reserving liberty for a recovery as coming out from the impugned order. It was also contended that now the Nagar



Parishad, Shergati, Gaya has issued a notice asking the appellant to deposit Rs.8,81,774/- without even a show-cause notice or any quantification of the damage occasioned. It is pointed out that the evaluation, as stated in the notice, has not been done with participation of the appellant herein. The notice dated 01.04.2023 is produced along with interlocutory application (I. A. No.2 of 2023) as Annexure-P1.

4. The learned counsel for the Nagar Parishad, Shergati, Gaya relies on Clause-16 of the agreement produced as Annexure-A-1 along with their counter affidavit, which enables the Nagar Parishad to recover the amounts from the contractor, if any damage is caused in the course of the work. It is also asserted that the appellant was participated in the inspection carried out for quantification of damages.

5. The appeal is from an order which grants an innocuous liberty so far as the recovery of the amounts to compensate the damages caused by a contractor, in accordance with law.

6. In that circumstances, necessarily, the proceedings taken by the Nagar Parishad, Shergati, Gaya has to be in accordance with law with proper notice to the contractor and not in an arbitrary manner. It has to be noticed that the learned Single Judge has not, on merits approved of the recovery by the Nagar



Parishad. The Nagar Parishad voluntarily came forward and paid the damages as claimed by the writ petitioner before this Court and sought liberty to recover the amounts from the contractor. Liberty was reserved only in accordance with law.

7. The learned counsel for the Nagar Parishad, reiterate that the quantification of the damages, even before the cheque was handed over, was done in the presence of the appellant and hence their notice has to be upheld. We have to immediately observe that the notice dated 01.04.2023 has to be challenged in appropriate proceedings, if the appellant so desires.

8. In so far as, the appeal is concerned, we do not find any reason to interfere with the order passed by the learned Single Judge.

9. In the above circumstance, leaving liberty to the appellant to challenge the notice dated 01.04.2023, in accordance with law, we dispose of the appeal without any observation on the merits.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	N/A
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