

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11399 of 2015

Subhas Prasad Singh son of Late Yugal Kishore Singh resident of village Datarpur, P.S. Barhat, District - Banka and Secretary, Prakhand Swakshata Samiti, Barahat, Banka.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary cum Chairman, Working Committee, Bihar Rajya Jal and Swakshata Mission, Bihar, Patna.
3. The Commissioner, Bhagalpur Division, Bhagalpur.
4. The District Magistrate, Banka.
5. The Deputy Development Commissioner cum Chief Executive Officer, Prakash Banka.
6. The Executive Engineer cum Member Secretary, Prakash Public Health Division, Banka.
7. The District Education Officer, Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pankaj Kr. Sinha, Adv.
	:	Mr. Rajiv Kumar Singh, Adv.
For the Respondent/s	:	Mr. Suresh Kumar, AC to GP1

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

Date : 11-10-2023

Heard the learned counsels for the parties.

The present writ petition has been filed for the following relief(s):-

“(i) Issuance of an appropriate writ/ writs, direction/ directions and in the nature commanding of mandamus directing the of and respondents to dues amount make payment of Rs. pending before them 6,28,000/- since long causing serious injuries to the petitioner which has not been paid even after due agreement as has been made with the petitioner on 24.10.2005 though the major portion of the amount of about



90% have already been paid by the concern authority.

(ii) Any other relief/ reliefs to which the petitioner is found entitled so.”

3. Learned counsel for the petitioner has stated that pursuant to the agreement entered between the parties, petitioner has completed the work entrusted to him i.e. construction of toilets. The authorities after being satisfied with the work done by the petitioner have paid 90% of the total bill amount but have till date not paid an amount of 6,28,000/- (Six Lacs Twenty Eight Thousand) which is 10% of the bill amount. Learned counsel has stated that inspite of several representations made and also the orders passed by this Court in CWJC No. 12170 of 2007, the authorities have not paid the balance 10% amount. Learned counsel has stated that the District Magistrate vide Memo No. 152 letter dated 30.01.2008 has stated that the amounts due to the petitioner will be paid within a period of 21 days but no amounts are paid till date. Further, it is stated by the learned counsel for the petitioner that though the construction was completed way back in the year 2007, the authorities for reasons best known to them have conducted an enquiry in the year 2017 and 2023 by which time most of the toilets constructed by the petitioner



have either become dilapidated and some of the them were destroyed by the villagers. Learned counsel has stated that the petitioner cannot be found fault with the vagaries of nature or for the destruction made by the villagers and therefore, prayed this Hon'ble Court to allow the present writ petition and direct the authorities to pay the amounts due to the petitioner.

4. Per contra, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that there is a dispute with regard to the constructions made by the petitioner. Learned counsel has stated that pursuant to the orders passed by District Magistrate, the authorities have conducted enquiry, where it was found that some of the toilets alleged to have been constructed by the petitioner were not constructed or were missing. Further, it is stated that out of the 17,22,000/- (Seventeenth Lakhs Twenty Two Thousand) payable to the petitioner 90% of the amount has already been paid and only the balance 1,72,200/- (One Lakh Twenty Two Thousand) remains. Learned counsel has stated that the writ petition involves disputed questions of fact which cannot be gone by this Hon'ble Court under Article 226 of the



Constitution of India and, therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. Admittedly, in the present case, the work was completed by the petitioner way back in the year 2007 for construction of toilets in the schools and 90% of the amounts due to the petitioner have already been paid and the balance 10% was promised to be paid by the Collector Memo No. 152 vide letter dated 30.01.2008 within a period of 21 days (Annexure-9). Along with the present writ petition, the petitioner has enclosed the list of schools where he has constructed the toilets (Annexure-4A). The authorities for reasons best known have kept quiet for a period of almost 17 years and under the persistence order of this Hon'ble Court conducted an enquiry in the year 2023. In the supplementary counter-affidavit, the authorities have stated that they have written a letter to the concerned Execution Engineer to furnish an enquiry duly verifying the number of toilets constructed, the same has not been placed on record. On the other hand, it is stated that the petitioner was put on notice to submit the list of toilets constructed by him, but the petitioner has not responded. Further, in the supplementary counter-affidavit, it



is stated that the Principal AG, Bihar has taken an objection that the petitioner has constructed 50 toilets for personal use and 297 toilets meant of BPL. However, it is to be noted that the petitioner has not constructed any personal toilets but he has only constructed toilets in the schools. Further, the petitioner is concerned with the Circle Office-cum-block, Barhat, Banka and the enquiry report with the above said Circle has not been annexed along with the supplementary counter-affidavit and only the enquiry report of Dhoriya Block and Banka Block have been annexed. This writ petition is the year of 2015 and the petitioner has enclosed the list of toilets constructed by him and the amounts payable by the authorities along with the writ petition, when the list is very much available along with the writ petition, it is not understandable as to why the petitioner was put on notice for furnishing the list again. Moreover, in this particular case all the toilets have been constructed in the schools therefore, the question of constructing any individual toilet in the name of any individual person does not arise. Therefore, the contention of the respondents that they have asked the petitioner to furnish the names of the persons in whose names toilets are



constructed, their father's name etc. is not without any legal basis and not understandable. The letter of the Collector dated 31.01.2008 (Annexure-9) reveals that the authorities concerned way back in the year 2008 after due enquiry has come to the conclusion that the amounts are due to the petitioner and that the amounts will be cleared within a period of 21 days, even though, more than 17 years have been lapsed, the authorities have not bothered to pay the said amount. The authorities cannot sit over the payments of the bills for decades together on some vague and frivolous grounds. Once, the work is completed, the authorities are bound to pay the amounts due to the petitioner even if there were any discrepancies or shortcomings in the execution of the work, the authorities concerned ought to have taken necessary action against the petitioner immediately after submissions of the bills but they cannot sleep over the matter for years together and come up with vague excuses after 17 years conducting of the enquiry by the authorities after more than 17 years cannot be countenanced by which time the toilets constructed by the petitioner have become dilapidated and in some cases have been destroyed by the villagers is also admitted by the



respondents in their counter-affidavit. Therefore, the enquiry is nothing but a sham exercise conducted by the authorities concerned only to deprive the petitioner from lawful amounts due to him. The authorities having extracted the work from the petitioner are expected to pay the bills in a time-bound manner and cannot take years together to pass the bills.

6. Having regard to the above mentioned facts and circumstances, this Court is of the opinion that the respondents are bound to pay the amounts due to the petitioner i.e. a sum of Rs. 6,28,000/ within a period of four weeks from the date of the receipt of a copy of this order. Even though learned counsel for the petitioner has sought the indulgence of this Court to grant interest on the amounts due to the petitioner, this Court is not inclined to grant the said relief.

7. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

