

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17638 of 2023

Ashok Kumar Pandit Son of Late Ram Ayodhya Pandit, Resident of Village- Hariharpur Kala, P.S.-Jamo Bazar, District-Siwan, Ex Mukhia, Gram Panchayat Raj Hariharpur Kala, Block-Goreyakothi, Dist-Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Panchayati Raj Department, Bihar, Patna.
2. The Commissioner, Saran Pramandal, Chhapra.
3. The District Officer cum Collector, Siwan.
4. The District Panchayat Raj Officer, Siwan.
5. The Sub-Divisional Magistrate (SDM) Maharajganj Sub-Division, District-Siwan-cum-District Public Grievance Officer, Siwan.
6. The Block Development Officer (BDO), Block-Goreyakothi, District-Siwan.
7. Prafull Ranjan, son of Dr. Ramesh Singh, R/o Village and P.O.-Kala Dumra, Prakhanda-Goreyakothi, Sub-Division-Maharajganj, District-Siwan.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 10229 of 2023

1. Dilip Kumar Tiwari Son of Jaleshwar Nath Tiwari, Resident of Village - Chanchopali, P.S. - G B Nagar, District - Siwan, Ex Mukhia, Gram Panchayat Raj Karanpura, Block - Goreyakothi, Dist. - Siwan.
2. Rajesh Anand Raj, Son of Amar Singh, Resident of Village- Jamo Bazar, P.S. - Jamo Bazar, District - Siwan, Ex Mukhia, Gram Panchayat Raj Jamo, Block - Goreyakothi, Dist. - Siwan.
3. Sachidanand Tiwari, Son of Surendra Tiwari, Resident of Village - Sarai, P.S - Goreyakothi, District - Siwan, Ex Mukhia, Gram Panchayat Raj Uttari Sarai Block - Goreyakothi, Dist - Siwan.
4. Munna Ram, Son of Late Mainekar Ram, Resident of Village- Meghwar, P.S. - Jamo Bazar, District - Siwan, Ex Mukhia, Gram Panchayat Raj Majhaliya, Block - Goreyakothi, Dist. - Siwan.
5. Ajay Kumar Prasad, Son of Late Hiralal Prasad, Resident of Village- Sareya, P.S. - Goreya Kothi, District - Siwan, Ex Mukhia, Gram Panchayat Raj Dakshini Sarai Block - Goreyakothi, Dist - Siwan.
6. Asha Devi, Wife of Satyendra Kumar Singh, Resident of Village - Barahoga Parsotim Sadaru Tola, P.S. - Goriakothi, District - Siwan, Ex Mukhia, Gram Panchayat Raj Barahoga Parsotim, Block - Goreyakothi, Dist. - Siwan.
7. Gayatri Devi, Wife of Late Ganga Sagar Mishra, Resident of Village - Sadipur, P.S. - Goriakothi, District - Siwan, Ex Mukhia Gram Panchayat Raj Sadipur, Block - Goreyakothi, Dist. - Siwan.
8. Bachchi Devi, Wife of Rameshwar Yadav, Resident of Village - Bardahan, P.S. - Goriakothi, District - Siwan, Ex Mukhia, Gram Panchayat Raj Mustafabad, Block - Goreyakothi, Dist. - Siwan.



9. Chanda Devi, Wife of Parma Sah, Resident of Village - Goreyakothi, P.S. - Goreyakothi, District - Siwan, Ex UpMukhia Gram Panchayat Raj Goreyakothi, Block - Goreyakothi, Dist. - Siwan.
10. Shazia Zareen, Wife of Kaunain Ahamad Siddique, Resident of Village - Mahammadpur, P.S. - Goreyakothi, District - Siwan, Ex Mukhia, Gram Panchayat Raj Harpur, Block - Goreyakothi, Dist - Siwan.
11. Chhoti Kumari, Daughter of Shashibhushan Singh, Resident of Village- Pipra, P.S. - Goreyakothi, District - Siwan, Ex Mukhia, Gram Panchayat Raj Bindwal, Block - Goreyakothi, Dist. - Siwan.
12. Yashwant Kumar, Son of Late Nishikant Singh, Resident of Village- Kaladumra, P.S. - G B Nagar, District - Siwan, Son of Ex Upmukhia, Gram Panchayat Raj Mohammadpur, Block - Goreyakothi, Dist. - Siwan.
13. Jagarnath Sah, Son of Shivbalak Sah, Resident of Village - Dudhara, P.S - Goreyakothi, District- Siwan, Ex Mukhia, Gram Panchayat Raj Dudhra, Block - Goreyakothi, Dist. - Siwan.
14. Rama Shankar Sah, Son of Naresh Sah, Resident of Village - Bhalui, P.S. - Jamo Bazar, District - Siwan, Ex Mukhia, Gram Panchayat Raj Hetimpur, Block Goreyakothi, Dist. - Siwan.
15. Kamlawati Devi, Wife of Prabhunath Sharma, Resident of Village - Ageyan, P.S. - Goreyakothi, District - Siwan, Ex Mukhia, Gram Panchayat Raj Ageyan, Block - Goreyakothi, Dist. - Siwan.
16. Rina Shree Wife of Ramawatar Ram, Resident of Village- Lilaru Aurangabad, P.S. - Goreyakothi, District - Siwan, Ex Mukhia, Gram Panchayat Raj Lilaru Aurangabad, Block - Goreyakothi, Dist. - Siwan.
17. Pratima Devi, Wife of Yadwendra, Resident of Village -Sisai, P.S - Goriakothi, District - Siwan, Mukhia, Gram Panchayat Raj Sisai, Block - Goreyakothi, Dist. - Siwan.
18. Kiran Devi, Wife of Ajay Kumar Tiwari, Resident of Village -Saidpura, P.S - Goriakothi, District - Siwan, Ex Mukhia, Gram Panchayat Raj Saidpura, Block - Goreyakothi, Dist. - Siwan.
19. Urmila Devi, Wife of Bajarangabali Sah, Resident of Village -Satwar, P.S. - G B Nagar, District - Siwan, Ex Mukhia, Gram Panchayat Raj Satwar, Block - Goreyakothi, Dist - Siwan.
20. Asagar Miyaa, Son of Bharadul Miyaan, Resident of Village - Sanibasantpur, P.S. - G B Nagar, District - Siwan, Mukhia, Gram Panchayat Raj Sanibasantpur, Block - Goreyakothi, Dist - Siwan.
21. Nutan Devi @ Nutan Verma, Wife of Late Dharmendra Kumar Verma, Resident of Village - Bhithi, P.S. - Goreyakothi, District - Siwan, Gram Panchayat Raj Bhithi, Block - Goreyakothi, Dist. - Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Panchayati Raj Department, Bihar, Patna.
2. The Commissioner, Saran Pramandal, Chhapra.
3. The District Officer -cum- Collector, Siwan.



4. The District Panchayat Raj Officer, Siwan.
5. The Sub-Divisional Magistrate (SDM) Maharajganj-Sub-Division, District - Siwan - cum-District Public Grievance Officer, Siwan.
6. The Block Development Officer (BDO), Block - Goreyakothi, District-Siwan.
7. Prafull Ranjan, Son of Dr Ramesh Singh, R/o Village and P.O. - Kala Dumra, Prakhand - Goreyakothi, Sub-division - Maharajganj, District-Siwan.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 17638 of 2023)

For the Petitioner/s	:	Mr. S.B.K. Manglam, Advocate
		Mr. Raju Prasad, Advocate
For the Respondent/s	:	Ms. Binita Singh, SC- 28
	:	Mr. Kumar Kamal Nayan, AC to SC-28

(In Civil Writ Jurisdiction Case No. 10229 of 2023)

For the Petitioner/s	:	Mr. S.B.K. Manglam, Advocate
	:	Mr. Raju Prasad, Advocate
	:	Mr. Mithilesh Kr. Upadhyay, Advocate
	:	Ms. Nupur Anand, Advocate
	:	Ms. Anita Kumari, Advocate
For the Respondent/s	:	Mr. Kumar Alok, SC- 7

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 06-03-2024

As the issue involved in both the writ petitions are similar, the above two writ petitions are being disposed of by a common order.

2. Heard Mr. S.B.K. Manglam, along with Mr. Raju Prasad, Mr. Mithilesh Kr. Upadhyay, Ms. Nupur Anand, Ms. Anita Kumari, learned Counsels appearing on behalf of the petitioners and Ms. Binita Singh, learned SC- 28, along with Mr. Kumar Kamal Nayan, learned AC to SC-28 and Mr. Kumar Alok, learned SC- 7 appearing on behalf of the State.

3. The present writ petition has been filed for the



following relief/s:

“i. For quashing of the order dated 07.06.2023 (Annexure-3) passed by the Principal Secretary, Panchayati Raj Department, State of Bihar, Patna-cum-2nd Appellate Authority (Resp. No.1).

ii. For quashing of the order dated 15.12.2022 (Annexure-2) passed by the Commissioner, Saran Pramandal, Chhapra-cum-First Appellate Authority (Resp. No.2).

Whereby and where under as by both orders District Officer, Siwan has been directed to lodge FIR and to take appropriate action against the Mukhia of Panchayatas (Petitioners) situated in Block-Goreyakothi, District-Siwan, for the allegation of misappropriation and embezzlement in financial year of 2020-21 and 2021-22 during Covid period viz Covid-19.”

4. Learned counsel appearing on behalf of the petitioners submits that he was heard by the District Public Grievance Redressal Officer, Siwan and an order was passed by him on 23.09.2022, where he has not found the allegation made by the complainant warranting any interference. The complainant, against the reasoned order passed by the District Public Grievance Redressal Officer (Respondent no.6), preferred an appeal under Section 7 of the Bihar Right to Public Grievance Redressal Act, 2015 before the Divisional Commissioner, Saran, who without interfering with the order passed by the District Public Grievance Redressal Officer, had



directed him to take action against the persons, who had misappropriated the public fund, which was to be utilised during the Covid period. Aggrieved by the said order, the complainant had again filed Second Appeal before the Additional Chief Secretary, Panchayati Raj Department, Government of Bihar. The Additional Chief Secretary passed an order on 07.06.2023 directing to lodge an FIR against the guilty Mukhiyas and to file the certificate cases against individual petitioners for recovery. It is submitted that the petitioners were not heard and an *ex-parte* order was passed by the Additional Chief Secretary, Panchayati Raj Department.

5. *Per-contra*, Mr. Prem Ranjan Raj, learned counsel appearing on behalf of the State and Mr. Sanjay Kumar, learned counsel appearing on behalf of the private respondent no.6 submitted that the complaint was made on the basis of cogent material. It was found that the petitioners had not purchased masks and sanitizers, which was required to be distributed in the different wards, from the *jeevika*, which was operating during the Covid period,. The petitioners, being the *Mukhiyas*, were required to distribute the same in different wards but in absence of any purchase, the people at large faced the consequences of the Covid-19 pandemic. As no action was



taken by the District Public Grievance Redressal Officer, the complainants were forced to file the first Appeal before the First Appellate Authority-cum-Commissioner, Saran Pramandal, Chhapra, and then second Appeal before the Additional Chief Secretary, who had taken action against the illegal act of the authorities, as well as, the petitioners, who at the relevant point of time, were *Mukhiyas* of different Panchayat Raj. He further submitted that the cause of action with respect to different Gram Panchayats, can not be clubbed together by filing one writ petition and no description of any fact has been made by the petitioners as to in what manner the order passed by the Additional Chief Secretary, Panchayati Raj Department can be interfered with.

6. Mr. Prem Ranjan Raj has referred the provision of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the 'Act, 2006') and has placed his reliance on Section 26(5) of the Act, 2006. He submitted that the Additional Chief Secretary is empowered to take action against the *Mukhiya*, if he/she is engaged in any misappropriation of funds in any manner. The order passed by the Additional Chief Secretary, who is the Second Appellate Authority, can not be interfered with, once a large scale misappropriation of fund has come to his knowledge.



7. I find it proper to refer the provisions of Sub-Section b of Section 2 of the Bihar Right to Public Grievance and Redressal Act, 2015, which defines Right to Public Grievance Redressal, provisions of Section 5 provides for Right to get opportunity of hearing and redressal on complaint within the stipulated time, provisions of Section 7 provides for appeal, Sub-Section 6 of Section 7 of the Act provides for Second Appeal, penalty has been provided under Section 8 of the Act and Section 9 provides for revision against the order passed by the Public Grievance Redressal Officer or First Appellate Authority or any other public authority, which are reproduced hereinafter:

“2(b) "Right to Public Grievance Redressal" means an opportunity of hearing and redressal provided to the citizens on a complaint within the stipulated time limit and right to get information about the decision made in the hearing and redressal of the complaint ;

5. Right to get opportunity of hearing and redressal on complaint within the stipulated time limit.-

(1) The Public Grievance Redressal Officer shall give an opportunity of hearing of a complaint filed under this Act within the stipulated time limit.

(2) The Public Grievance Redressal Officer may seek the assistance of such any other officer, public authority or employee as he considers it necessary for the appropriate discharge of his duties for hearing and redressal of a complaint under sub-section (1).

(3) Any officer, public authority or



employee, whose assistance has been sought under sub-section (2), shall render all assistance to the Public Grievance Redressal Officer seeking his assistance and for the purposes of any contravention of the provisions of this Act, such other officer or employee, as the case may be, shall be treated a Public Grievance Redressal Officer.

(4) The stipulated time limit shall start from the date on which date a complaint/appeal is filed to the Public Grievance Redressal Officer or to a person authorized by him to receive the complaints or to the first appellate authority or the second appellate authority. Receipt of a complaint shall be duly acknowledged.

(5) The Public Grievance Redressal Officer on receipt of a complaint under sub-section (1) shall give an opportunity of hearing to the complainant, within the stipulated time limit, and after hearing the complainant, decide the complaint either by accepting it or by suggesting an alternative benefit or relief available under any other law, policy, service, programme or scheme or by rejecting it for the reasons to be recorded in writing and shall communicate his decision on the complaint to the complainant within the stipulated time limit.

7. Appeal.-

(1) Any person, who has not been given an opportunity of hearing and redressal of the complaint within the stipulated time limit or who is aggrieved by the decision of the Public Grievance Redressal Officer, may file an appeal to the first appellate authority within thirty days from the expiry of the stipulated time limit or from the date of the decision of the Public Grievance Redressal Officer:

Provided that the first appellate authority may admit the appeal after the expiry of the period of thirty days but not exceeding forty five days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) If the Public Grievance Redressal Officer does not comply with the provision of



section 5, any person aggrieved by such non-compliance, may submit complaint directly to the first appellate authority which shall be disposed of, in the manner of a first appeal.

(3) The first appellate authority may order the Public Grievance Redressal Officer to given an opportunity of hearing and redressal to the complainant within the period specified by it or may reject the appeal.

(4) A second appeal against the decision of the first appellate authority may be filed before the second appellate authority within thirty days from the date of the decision of the first appellate authority: Provided that the second appellate authority may admit the appeal after the expiry of the period of thirty days but not exceeding forty five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(5) An aggrieved person may file an appeal directly to the second appellate authority, if the Public Grievance Redressal Officer does not comply with the order of first appellate authority passed under sub-section (3) or the first appellate authority does not dispose of the appeal within the stipulated time limits and it shall be disposed of in the manner of a second appeal.

(6) The second appellate authority may order the Public Grievance Redressal Officer or the first appellate authority to give an opportunity of hearing and redressal to the complainant or dispose of the appeal, as the case may be, within the period specified by it, which in any case will not exceed thirty days or may reject the appeal.

(7) Along with the order to give an opportunity of hearing and redressal to the complainant, the second appellate authority may impose a penalty on Public Grievance Redressal Officer or any other public authority or the first appellate authority in accordance with the provisions of section 8.

8. Penalty.-

(1) Where the second appellate authority is of the opinion that the Public



Grievance Redressal Officer or any other public authority or the first appellate authority has failed to give an opportunity of hearing and redressal within the stipulated time limit without any sufficient and reasonable cause, it may impose on him a penalty which shall not be less than five hundred rupees but not more than five thousand rupees:

Provided that before imposing any penalty under this sub section, the person on whom penalty is proposed to be imposed shall be given a reasonable opportunity of being heard.

(2) The penalty imposed by the second appellate authority under sub-section (1) shall be recoverable from the salary of the Public Grievance Redressal Officer or any other public authority or the first appellate authority.

(3) The second appellate authority, if it is satisfied that the Public Grievance Redressal Officer or any other public authority or the first appellate authority has failed to discharge the duties assigned to him under this Act, without assigning sufficient and reasonable cause, may recommend action against him under the service rules applicable to him.

9. Revision.-

The Public Grievance Redressal Officer or any other public authority or first appellate authority aggrieved by an order of the second appellate authority in respect of imposing of penalty under this Act, may make an application for revision of the order to the officer or authority nominated by the State Government within a period of sixty days from the date of that order. The nominated officer or authority shall dispose of the application in accordance with the prescribed procedure:

Provided that the officer or authority nominated by the State Government may entertain an application after the expiry of the period of sixty days but not exceeding seventy five days, if he is satisfied that the applicant was prevented by sufficient cause from filing the appeal in time.”



8. The brief facts of the writ petition bearing CWJC No.17638 of 2023 are that one Prafull Ranjan (Private Respondent no.7) on 30.05.2022, filed a complaint before the District Public Grievance Redressal Officer, District – Siwan (hereinafter referred to as ‘DPGRO Siwan’) stating that there have been misappropriation and embezzlement in the purchase and distribution of the masks and sanitizers during pandemic period of Covid-19 during the Financial Year 2020-21 to 2021-22 in Prakhand (Block) Goreyakothi, District – Siwan by the Mukhiya and Panchayat Secretaries of Block – Goreyakothi. This complaint was entertained and disposed of vide order dated 23.09.2022 by DPGRO, Siwan, wherein findings have come that “allegations against the Government servants and Mukhiyas are not proved”. By this order the DPGRO, Siwan has found the Government Servants and Mukhiyas innocent. Upon being aggrieved by the judgment/order of the DPGRO, Siwan, the Private Respondent No.7 filed appeal before First Appellate Authority – cum – Pramandal Commissioner, Saran Pramandal Chhapra (Resp. No.2) on 20.10.2022, and the First Appeal dated 20.10.2022 was disposed of by the First Appellate Authority – cum – Commissioner, Saran Pramandal, Chhapra (Resp. No.2) by judgment/order dated 15.12.2022, whereby District Officer,



Siwan was directed to take appropriate action against the alleged persons, which is under challenge before this Court. Again on account of non-compliance of judgment/order dated 15.12.2022 passed by the Resp. No.2, Commissioner, Saran Pramandal Chhapra, the private respondent no.7 filed second appeal dated 15.01.2023 before 2nd Appellate Authority-cum-the Principal Secretary Panchayati Raj Department, State of Bihar, which was adjudicated by judgment/order dated 07.06.2023, whereby the District Officer, Siwan (Respondent no.3) has been directed to lodge FIR against the petitioners (Mukhiya, Up-Mukhiya) and Panchayat Secretaries, which is also under challenge before this Court. Same facts have been reiterated in CWJC No.10229 of 2023. (Emphasis supplied)

9. The original complaint has not been brought on record of the writ petition, however, the summary of the complaint as enumerated by the District Public Grievance Redressal Officer, is annexed as 'Annexure-1' to the writ petition.

10. The petitioners have stated in paragraph no. 16 of CWJC No.17638 of 2023 and paragraph no.12 of the CWJC No.10229 of 2023 that they were not served notice and without giving any opportunity of hearing to them by the First Appellate



Authority and the Second Appellate Authority, an order dated 15.12.2022 was passed by the First Appellate Authority and an order dated 07.06.2023 was passed by the Second Appellate Authority.

11. The provisions of Section 26(5) of the Act, 2006, for utilization of the fund and once the same is misappropriated, in any manner, power is vested in the Additional Chief Secretary to take appropriate action, under sub-Section 5 of Section 18 of the Act. Sub-Section 5 of Section 26 of the Act, 2006 and Sub-Section 5 of Section 18 of the Act, 2006, are reproduced hereinafter:

26. Property and Funds of Gram Panchayat : —

(5) For every Gram Panchayat there shall be constituted a Gram Panchayat Fund bearing the name of the Gram Panchayat and there shall be placed to the credit thereof —

(a) Contributions and grants, if any, made by the Central or the State Government;

(b) Contributions and grants, if any, made by the Zila Parishad, Panchayat Samiti or any other local authority;

(c) Loans, if any, granted by the Central or the State Government;

(d) All receipts on accounts of taxes, rates and fees levied by it;

(e) All receipts in respect of any schools, hospitals, dispensaries, buildings, institutions or works vested in, constructed by or placed under the control and management of the Gram Panchayat;

(f) All sums received as gift or



contribution and all income from any trust or endowment made in favour of the Gram Panchayat;

(g) Such fines and penalties imposed and realised under the provisions of this Act as may be prescribed; and

(h) All other sums received by or on behalf of the Gram Panchayat.

18.(5) Without prejudice to the provisions under this Act, if, in opinion of the Commissioner having territorial jurisdiction over the Gram Panchayat, a Mukhiya or an Up-Mukhiya of Gram Panchayat absents himself without sufficient cause for more than three consecutive meetings or sittings or willfully omits or refuses to perform his duties and functions under this Act, or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties or becomes physically or mentally incapacitated for performing his duties or is absconding being an accused in a criminal case for more than six months, the Commissioner may, after giving the Mukhiya or Up-Mukhiya a reasonable opportunity for explanation, by order, remove such Mukhiya or Up-Mukhiya, as the case may be, from office. The Mukhiya or Up-Mukhiya so removed shall not be eligible for re-election as Mukhiya or Up-Mukhiya or Member of Gram Panchayat during the remaining term of office of such Gram Panchayat.

12. Though, the aforesaid statutory provisions do not bestow any power to the Additional Chief Secretary to lodge an FIR. Moreover, the order may be interfered on account of the fact that on consideration of the Impugned Order passed by the Second Appeal Authority by passing a general order without giving opportunity of hearing to all the *Mukhiyas* and any material brought on record, such as, audit report and details of



the expenditure incurred by the concerned Gram Panchayat and also on account of no consideration has been made in the order with respect to the number of *jeevika* Center operating in the Gram Panchayat or its neighboring villages, as well as, in absence of any evidence taken into consideration by the Additional Chief Secretary that any SOP (Standard Operating Procedure) during the said period with respect to the individual Panchayat to purchase sanitizer by the *Mukhiya* of the Panchayat from a particular center to be distributed among the villagers, during the Covid-19 pandemic period. The order passed by the First Appellate Authority, as well as, the Second Appeal Authority, in absence of such consideration calls for interference.

13. I am of the opinion in absence of proper pleading made in the present writ petition I don't find it fit for exercising extraordinary jurisdiction under Article 226.

14. The writ petitions fail. The petitioners had remedy of revision provided under Section 9 of the Bihar Public Grievance Redressal Act, 2015, which was required to be filed within a period of 60 days from the date of passing of the Second Appellate Authority order. The petitioners, instead of filing revision, in a misconceived manner, have approached this



Court.

15. The present writ petition was registered on 22.07.2023. In case petitioner avail remedy of Revision, the Revisional Authority may consider the limitation in view of the fact that the writ petition was registered on 13.12.2023.

16. This Court, however, caution the petitioners not to file writ petition without proper pleading and evidence in support of the relief(s) prayed for as, in the present writ petition. The Apex Court in case of **Bharat Singh & Ors. Vs. State of Haryana & Ors.(AIR 1988 SC 2181)** in similar facts and circumstances, as that of the present writ petition, where the facts were stated but not supported with evidence in the writ petition or counter affidavit, has deprecated the practice and has declined to entertain such petition. In the said judgement, in paragraph no.13 the Apex Court has made following observations:

“13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such



facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.”

17. With the aforesaid observations and directions,

the present writ petition stands disposed of.

(Purnendu Singh, J.)

Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.03.2024
Transmission Date	NA

