

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8373 of 2017

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M/s Laxmi Enterprises through its Partner Anil Kumar Thakurm, S/o Late Devendra Thakur resident of Shivpuri, Boring Road, P.S.-Shastri Nagar, District-Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Secretary Public Health, Engineering Department, Bishweshwaraiya Bhawan, Baily Road, Patna
2. The Chief Engineer Public Health Engineering Division, Nirman Bhawan Baily Road, Patna.
3. The Superintending Engineer, Public Health Engineering Circle, Samastipur, Dist.-Samastipur.
4. The Executive Engineer, Public Health Engineering Divison Samastipur, Dist.-Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Uday Prasad Singh, Adv.
For the Respondent/s : Mr.Manish Kumar, GP4

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 03-09-2025

1. The present Writ petition is filed seeking a direction upon the respondent to release the petitioner's admitted dues towards the Security Deposit for the executed work, namely, construction of drinking water sanitary tank wells in the ARSENIC affected area at Mohiuddin Nagar Block for the year 2007-2008, vide Agreement No. F2/05, 2007-2008 which has not been released despite the petitioner's repeated request. The



petitioner asserts that although the Executive Engineer has closed the aforesaid agreement, the security deposit remains unpaid thereby constraining him to approach this Court.

2. The brief facts as culled out from the Writ petition are that after due process of tender, the petitioner was awarded the aforesaid work, and accordingly entered into an Agreement vide its No. 26F2/05/2007-2008 dated 19.04.2007. Pursuant to the work order, the petitioner commenced execution of the work, in the presence of the site engineer deployed by the respondents, who recorded day-to-day measurements in the measurement Book. After due verification, the first running bill was prepared, and thereafter, payment was made with respect to seven wells. Subsequently, the petitioner reported non-completion of the remaining works, on the ground that the site is a sanded area, where labourers were unwilling to continue the work.

3. It is submitted that the petitioner visited the office of the respondents and informed



about the non-execution of work and further approached the Superintending Engineer, who assured him that the an alternative site would be provided. Thereafter, the Executive Engineer, Public Health Division, Samastipur, vide Letter No. 4N/1/12-2006-2007/693 informed the Superintending Engineer, Public Health Engineering Division, Darbhanga, stating that out of thirty-six wells, only seven wells had been completed, for which payment was released to the petitioner. He further requested to terminate the agreement, as the petitioner was unable to execute the remaining work, and also requested for release of the petitioner's security deposit. In spite of it, the security deposit was not released.

4. A detailed counter affidavit was filed by the respondent No. 4 denying all the allegations made in the Writ petition, except to the extent of admitting the work actually executed by the petitioner. The counter affidavit disclose that out of thirty-six wells, the petitioner completed construction of only seven wells, for which



payment was made. The respondents submits that it was the duty of the petitioner to inspect the site, prior to issuance of the work order, and once the work order was issued, he has no right to demand a different site for construction of wells, on account of geographical conditions. As the petitioner failed to complete the work within the stipulated period and did not even seek for extension of time, there was a clear breach of contract. Consequently, the respondents, having no other option, forfeited the earnest money and therefore, prayed for dismissal of the Writ petition.

5. Heard the Learned counsel for the petitioner as well as the Learned counsel for the respondents.

6. Upon perusal of the records, it is evident that the agreement was dated 19.04.2007 and the petitioner executed the work on only for seven wells out of thirty-six wells. The petitioner himself informed the respondents that he would not execute the remaining work, due to the geographical condition of the land, as it was a



sanded area. Annexure-2 is the letter dated 09.05.2012, wherein the petitioner sought release for the security deposit. Except for this, there is no other document to prove that the petitioner made any further request or representation for payment of the security deposit. The present Writ petition was filed in the year 2017, and no explanation was offered for the inordinate delay of five long years in approaching this Court. Furthermore, Clause 23 of the agreement reads as follows:"

In case any dispute or difference shall arise between the parties or either of there upon any question relating to the meaning of the specifications, designs, drawings and instructions here before mentioned or as to the quality of workmanship or materials used on the work or as to the construction of any of the conditions or any clause or thing there in contained or as to any question, claim, rights of the parties, or any matter, or things whatsoever in any way arising out of or relating to the contract designs, drawings specifications, estimates, instruction



order of these conditions or otherwise concerning the work or the execution, or failure of execute the same whether arising during the progress of the work of after the completion or abandonment thereof or as the breach of those contract then either party shall forth with give to the order notice of such dispute or difference and such dispute or difference shall be referred to the Superintending Engineer of the circle and his decision there on shall be final, conclusive and binding on all the parties.

7. Clause 23 of the agreement specifically provides that in the event of any dispute or difference, the matter has to be referred to the Superintending Engineer of the circle, whose decision shall be final, conclusive, and binding on all the parties. However, the petitioner has not invoked the said clause by approaching the Superintending Engineer of the circle, to settle the dispute. Once there is an effective alternative remedy available under the agreement, it is for the petitioner to avail the same. The pleadings of the



Writ petition are also very much silent as to why such recourse was not taken. The delay of five long years in approaching this Court was not explained.

8. In view of the above discussion, this Court is not inclined to grant any relief to the petitioner. Therefore, the Writ petition stands dismissed as it devoid of merits.

(G. Anupama Chakravarthy, J)

AMANDEEP/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.09.2025
Transmission Date	

