

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 4268 of 2013 (G)

PETITIONER(S) :

K.O. PAUL,
AGED 54 YEARS, S/O OUSEPH,
KALLELY HOUSE, PARIYARAM P.O.,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT - 680 721.

BY ADV. SRI.C.V.MILTON.

RESPONDENT(S) :

THE SECRETARY,
KAIPARAMBA GRAMA PANCHAYATH, MUNDOOR P.O.,
THRISSUR DISTRICT 680 546.

BY ADV. SRI.T.M.CHANDRAN &
BY GOVERNMENT PLEADER SMT. K.A.SANJEETHA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
21-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1: TRUE COPY OF THE LETTER DATED 22/12/2004 SENT TO THE PETITIONER
AWARDING THE CONSTRUCTION OF THE INDOOR STADIUM.
- EXHIBIT P2:- TRUE COPY OF THE AGREEMENT DATED 31/12/2004.
- EXHIBIT P3:- TRUE COPY OF THE PROJECT PROFORMA.
- EXHIBIT P4:- TRUE COPY OF THE REVISED ESTIMATE.
- EXHIBIT P5:- TRUE COPY OF THE DETAILS DATED 19/12/2009 OBTAINED THROUGH
RIGHT TO INFORMATION ACT 2005.
- EXHIBIT P6:- TRUE COPY OF THE LETTER DATED 15/09/2009 SENT TO THE RESPONDENT
REQUESTING TO DISCHARGE THE PETITIONER FROM EXECUTING THE WORK.
- EXHIBIT P7:- TRUE COPY OF THE LETTER DATED 25/09/2009.
- EXHIBIT P8:- TRUE COPY OF THE LAWYER NOTICE DATED 14/09/2012 SENT TO THE
RESPONDENT.
- EXHIBIT P9:- TRUE COPY OF THE REPLY NOTICE DATED 04/10/2012 RECEIVED FROM
THE RESPONDENT.
- EXHIBIT P10:- TRUE COPY OF THE NEWS ITEM PUBLISHED IN MALAYALA MANORAMA DATED
19/01/2013.
- EXHIBIT P11:- TRUE COPY OF THE REPRESENTATION DATED 20/01/2013.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 4268 of 2013

Dated this the 21st day of July, 2015.

JUDGMENT

The petitioner has approached this Court, aggrieved by the action of the respondent panchayath in retaining the security deposit of the petitioner.

2. The petitioner alleges that Ext.P2 agreement has been executed by the respondent panchayath with the petitioner on 31.12.2004 to construct a multi purpose indoor stadium at Mundoor. Accordingly the petitioner has completed 50% of the work and the respondent has paid the amount for the work executed after deducting the retention money from it. The respondent has changed the plan and estimate of the approved work by changing even its structure and sent the revised plan and estimate to the LSGD Executive Engineer on 31.5.2007 for sanction. However, the changes were made by the respondent without consulting the petitioner. The respondent had no discussion with him before revising the plan

and estimate. In the circumstances stated above, the respondent was forcing the petitioner to execute and complete the works as per the revised plan and estimate. The petitioner further alleges that changes made in the agreement are against the provisions of Contract Act as the work agreement was signed after following all the legal procedures and formalities. In the circumstances, the petitioner is not bound to execute any of the work which is not mentioned and included in the aforementioned work agreement and he is not at all interested to do it. He has intimated the respondent his intention to discontinue the work and requested to discharge him from the agreement as there is a breach of contract. However, respondent is illegally retaining the retention money deducted from the bills due to the petitioner along with the security deposit without mentioning any reason to do so.

3. In the statement filed by the respondent, it was stated that it is true that Ext.P2 agreement dated 31.12.2004 was executed between the petitioner and the respondent

clearly specifying the terms and conditions for the work of construction of a multi purpose Indoor Stadium at Mundoor. Though the petitioner has completed some portion of work, he could not complete the whole work in terms of the agreement mentioned above and thus the petitioner violated the terms and conditions of the agreement. Even after time was granted as requested by the petitioner, he could not complete the work in terms of the agreement. Thereby, this respondent has served Ext.P6 final notice dated 15.9.2009 to the petitioner calling explanation why the retention and other amounts should not be forfeited after cancelling the agreement and realise the loss sustained by the respondent. Thereafter, the petitioner has sent Ext.P7 letter requesting to discharge him from the work. The statements made in Ext.P8 notice are not fully true and correct. To Ext.P8 notice, the respondent has sent Ext.P9 reply notice. The respondent has not invited fresh tender as alleged by the petitioner and as stated in Ext.P10 paper publication as the plan to construct Indoor Stadium was

not approved.

4. Arguments have been heard.

5. It was submitted by both sides that the petitioner has been paid value of the work done and now the dispute is regarding the retention of the security amount. As the respondent has a definite case that the petitioner has violated the terms and conditions of Ext.P2 agreement dated 31.12.2004, this Court is of the view that only a civil court can, after a detailed evidence, enter a clear findings in that regard.

Therefore, the writ petition is disposed of permitting the petitioner to approach the civil court for the redressal of the grievance. However, it is hereby made clear that the judgment will not stand in the way of the respondent panchayath in considering the petitioner's claim if he files a representation within a period of one week from today.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.