

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

FRIDAY, THE 21ST DAY OF JUNE 2013/31ST JYAISHTA 1935

WP(C).No. 14607 of 2008 (L)

PETITIONER :

B.HARIKUMAR, S/O.P.BHASKARAN,
AGED 44 YEARS, BHASKARA VILASOM, KAKKAKUTOOR,
EZHUKONE, KOTTARAKKARA, KOLLAM DISTRICT.

BY ADV. SRI.RAJEEVE.P.

RESPONDENT(S):

1. THE DISTRICT COLLECTOR, KOLLAM.
2. THE SECRETARY,
EZHUKONE GRAMA PANCHAYAT, EZHUKONE.
3. DEPUTY TAHSILDAR (RR),KOTTARAKKARA, KOLLAM.

R1 & R3 BY GOVERNMENT PLEADER SMT.ANITHA RAVINDRAN
R2 BY ADV. SRI.M.K.CHANDRAMOHAN DAS, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 21-06-2013, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J U D G M E N T

Dismissed for default.

21/06/2013

SD/- V.CHITAMBARESH,JUDGE

/TRUE COPY/

PA.TO.JUDGE

sts

K.SURENDRA MOHAN, J.

W.P.(C) No.14607 of 2008

Dated this the 19th day of January, 2015

J U D G M E N T

The petitioner has filed this writ petition challenging Exts.P3 and P5 proceedings issued by respondents 2 and 3 for recovery of amounts from the petitioner. The petitioner was the Convenor of a Beneficiary Committee of Ward No.6 of Ezhukone Grama Panchayat. Under the 'Janakiyasuthranam' scheme for the year 1997-98, he was entrusted with the work of Kakkakotoor-Eliyod road. The work was undertaken by the petitioner as per Ext.P1 agreement dated 27.04.1998. The case of the petitioner is that, the work had been completed within the stipulated period itself. The work was conducted under the supervision of the Beneficiary Committee as well as the Standing Committee for Finance. There were periodic inspections and assessment of progress of the work. Amounts were being released to the petitioner on the basis of the progress achieved in the execution of the work. After the completion of the work, all the records were submitted to the Panchayat.

2. After 10 years, on 29.01.2008, the petitioner was issued with Ext.P3 notice of the 2nd respondent demanding return of the amount that had been paid to him for executing the work in question. The amount demanded is ₹3,17,000/- with interest. The petitioner submitted his explanation by Ext.P4. However, without considering the

explanation, as per Ext.P5 proceedings, action under the Revenue Recovery Act has been initiated. The petitioner has therefore, challenged Exts.P3 and P5 in this writ petition.

3. This writ petition was admitted on 13.05.2008 and an interim order of stay was granted, which continues to be in force.

4. According to the counsel for the petitioner, the entire work that was undertaken by the petitioner was completed during the year 1997-98 itself. All the records relating to the work were also handed over to the Panchayat. The 2nd respondent ought to be in possession of the said records. According to the counsel, the matter is essentially contractual, there has been no quantification or determination of the amount that has been demanded and therefore, action under the Revenue Recovery Act is not warranted. It is also pointed out that, the claim that has been made almost ten years after the work was executed, is barred by time.

5. Adv.Sri.M.K.Chandramohan Das appears for the 2nd respondent. The learned Government Pleader appears for respondents 1 and 3. A counter affidavit has been filed by the 3rd respondent. According to the counter affidavit, the demand notice Ext.P5 was issued pursuant to a requisition by the 2nd respondent. The details of the liability of the petitioner are not available with the said respondent. No counter affidavit is filed by the 2nd respondent.

6. Heard. It is not in dispute that, the work was undertaken by the petitioner as Convenor of the Beneficiary Committee as per Ext.P1 agreement. A perusal of Ext.P3 shows that, the amount demanded from the petitioner had been paid to him on various dates during 1997-98. The amount had been disbursed during the period from April to the end of June 1998. The work had been undertaken, under the supervision of a Beneficiary Committee. The Beneficiary Committee was periodically supervising and assessing the progress of the work. Ext.P2 is a certificate issued by the Vice President of the Grama Panchayat who was representing the concerned Ward. He was also the Chairman of the Standing Committee for Finance of the Panchayat. According to Ext.P2 certificate, the work had been completed within the stipulated time itself, satisfactorily. However, according to the counsel for the 2nd respondent, no records relating to the work are available with the said respondent.

7. The fact that records of the work are not available with the office of the 2nd respondent cannot be a reason for demanding the amount that had been paid to the petitioner for works undertaken by him under supervision of the Beneficiary Committee. The work was implemented admittedly under the 'Janakiyasuthranam' scheme. There is nothing to indicate that, there was any quantification or fixing of liability on the petitioner before issuing Exts.P3 and P5. Though the

petitioner had submitted Ext.P4 explanation, the same has also not been considered. Apart from the above, the recovery proceedings are time barred, as rightly contended by the petitioner. In view of the above, the petitioner is entitled to succeed.

This writ petition is, therefore, allowed. Exts.P3 and P5 are quashed.

Sd/-
K.SURENDRA MOHAN, JUDGE.

AV