

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 17TH DAY OF SEPTEMBER 2015/26TH BHADRA, 1937

WP(C).No. 25620 of 2007 (Y)

PETITIONER :

**T.T. MICHAEL, GOVERNMENT CONTRACTOR,
THAZHATHIL HOUSE, INCHAKUNDU P.O., PUDUKKAD VIA,
THRISSUR DISTRICT.**

**BY ADVS.SRI.BABU JOSEPH KURUVATHAZHA
SRI.K.I.SAGEER**

RESPONDENT(S):

- 1. CHALAKUDY BLOCK PANCHAYAT,
REPRESENTED BY ITS SECRETARY, OFFICE OF THE
CHALAKUDY BLOCK PANCHAYAT, CHALAKUDY,
THRISSUR DISTRICT.**
- 2. SECRETARY, OFFICE OF THE CHALAKUDY
BLOCK PANCHAYAT, CHALAKUDY, THRISSUR DISTRICT.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

sts

WP(C).NO.25620/2007

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE AGREEMENT BEARING NO.15/01-02/RDD, DATED 13/6/2001
EXECUTED BY THE PETITIONER.**
- P2 COPY OF THE PROCEEDINGS OF THE COMMISSIONER OF RURAL
DEVELOPMENT, THIRUVANANTHAPURAM BEARING NO.4201/R&1.2/02/CRD
DATED 28/3/2007 EVIDENCING THE REGISTRATION OF THE 5TH PART AND
FINAL BILL**
- P3 COPY OF THE REPRESENTATION DATED 20/4/2007 FILED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT**
- P4 COPY OF THE JUDGMENT DATED 4/6/07 IN WP(C).NO.16481/07 OF THIS
HON'BLE COURT**
- P5 COPY OF THE COVERING LETTER DATED 11/6/07 OF THE PETITIONER.**
- P6 COPY OF THE ORDER NO.E.611/07 DATED 25/6/07 OF THE 2ND RESPONDENT**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

A.V.RAMAKRISHNA PILLAI, J

WPC No.25620 of 2007

Dated this the 17th day of September, 2015

JUDGMENT

The petitioner who is a contractor by profession was awarded with the construction of Chayipinkuzhi-Peelarmuzhi-Kanalpathi-Vettikuzhi road, in Kodassery Grama Panchayat by the second respondent, on behalf of the first respondent.

2. According to the petitioner, when the work was in progress, three part payments were released to the petitioner and at the time of releasing those part payments, an amount of ₹1,15,679/-, ₹1,45,038/- and ₹1,61,753/- were retained towards retention on 15.12.2001, 5.3.2002 and 29.3.2004 respectively. Thus, the total amount retained was ₹4,22,569/-.

3. According to the petitioner, as per the provisions of law, on satisfactory execution of the entire work, the retention amount has to be released forthwith. Ext.P2

proceeding of the Commissioner for Rural Development which was based upon the proceeding of the respondents, establishes that the petitioner satisfactorily executed the entire work and final bill was submitted as early as on 28.3.2007. Though the petitioner filed various representations before the second respondent to get the retention amount released, no favourable action was taken. It was in these circumstances, the petitioner approached this Court which resulted in Ext.P4 judgment. The petitioner alleges that on the basis of an erroneous appreciation of facts and law, the second respondent issued Ext.P6, adopting the stand that as and when the payment is received by the first respondent, the retention amount due to the petitioner would be released.

4. According to the petitioner, the work was fully funded by the NABARD and the retention amount was duly received by the respondents in time. Therefore, there is absolutely no justifiable reason for not releasing the retention amount due to the petitioner. It is with this background the petitioner has come up before this Court.

5. Though notice has been served on the respondent Panchayat, they did not turn up.

6. The learned counsel for the petitioner would point out that while disbursing the first part bill on 15.12.2001, an amount of ₹1,15,679/- was retained by the respondent Panchayat towards retention. Though a sum of ₹11,56,078/- was disbursed to the petitioner, when the second part bill was disbursed, an amount of ₹1,45,038/- was retained towards retention on 5.3.2002 and when the third part bill was disbursed, an amount of ₹1,61,753/- was retained towards retention on 29.3.2004. Thus, according to the petitioner, a total sum of ₹4,22,569/- was retained for the period between 15.1.2001 and 29.3.2004. The respondents were bound to retain the above payment in deposit for the purpose of releasing the petitioner on satisfactory execution of the entire work. Ext.P2 shows that the petitioner has completed the work to the satisfaction of the respondent. Therefore, the amount retained should have been disbursed to the petitioner on completion of the execution of the work.

Therefore, this writ petition is disposed of quashing Ext.P6 and directing the respondents to disburse the retention amount due to the petitioner within a period of three months from the date of receipt of a copy of this judgment, failing which the respondents shall pay interest at the rate of 10% per annum from the date on which each payment had become due till they are actually paid.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

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true copy

P.S.TO JUDGE