

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 27715 of 2014 (L)

PETITIONER:

**E.G. SIJIL KUMAR
EDATHIPARAMBIL HOUSE, LOKAMALESWARAM, KODUNGALLUR P.O.
THRISSUR DISTRICT.**

**BY ADVS.SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY**

RESPONDENTS:

- 1. THE KODUNGALLUR MUNICIPALITY
MUNICIPAL OFFICE, KODUNGALLUR-680664
THRISSUR DISDTRICT, REPRESENTD BY ITS SECRETARY.**
- 2. THE SECRETARY
THE KODUNGALLUR MUNICIPALITY, MUNICIPAL OFFICE
KODUNGALLUR, THRISSUR DISTRICT-680664**
- 3. THE MUNICIPAL ENGINEER
KODUNGALLUR MUNICIPALITY, MUNICIPAL OFFICE
KODUNGALLUR, THRISSUR DISTRICT-680664.**

**R1 & R2 BY ADV. SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN**

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

**EXHIBIT P1- TRUE PHOTOCOPY OF THE CONTRACTORS' REGISTRATION CARD
ISSUED BY THE SUPERINTENDING ENGINEER, IRRIGATION CENTRAL CIRCLE,
THRISSUR DAED 30-03-2012.**

**EXHIBIT P2- TRUE PHOTOCOPY OF THE WORK ORDER BEARING NO. PW1-9122/10
DATED 29-07-2011.**

**EXHIBIT P3- TRUE PHOTOCOPY OF THE WORK ORDER BEARING NO. PW1-5639/10
DATED 17-12-2010.**

**EXHIBIT P4- TRUE PHOTOCOPY OF THE REMINDER ISSUED BY THE PETITIONER TO
THE 2ND RESPONDENT.**

**EXHIBIT P4(a)- TRUE PHOTOCOPY OF THE REMINDER ISSUED BY THE PETITIONER
TO THE 2ND RESPONDENT.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

DAMA SESHADRI NAIDU, J.

W.P.(C) No.27715 of 2014

Dated this the 11th day of March, 2015

JUDGMENT

Heard the learned counsel for the petitioner and the learned counsel for the respondents, apart from perusing the record. Since the issue lies in a narrow compass, this Court proposes to dispose of the writ petition at the admission stage itself.

2. Briefly stated, the petitioner, a class 'A' PWD contractor, was awarded two civil works covered by Exts.P2 and P3 by the respondent-Municipality. Eventually, on the alleged completion of the said works, questioning the delay on the part of the respondent-Municipality in paying the amount due to the petitioner, he has filed the present petition.

3. The respondent-Municipality filed its counter affidavit contending that out of two works awarded to the petitioner, he could complete only one work satisfactorily. It is the further contention of the respondent-Municipality that regarding the

other work, there was delay and that later the petitioner sought extension of time, which was not provided by the respondent-Municipality. The subsequent completion of the work, if at all, is without any express authority on the part of the respondent-Municipality.

4. It is profitable to extract the defence set up by the respondent-Municipality in negation of the petitioner's claim:

“4. As evident from Ext.P2 order issued by the 3rd respondent, the work relates to maintenance school of a nursery school at pulloot. In this context it is pertinent to submit that the Nursery school at Pulloot is located in an old dilapidated building owned by the 1st respondent Municipality. When I commenced the maintenance work, the concerned Ward member suggested a modification to the work that, in view of the dilapidated status of the building, it would be more appropriate to demolish the same and to construct a new one rather than effecting maintenance to the existing structure. It is understood that the concerned Ward member had raised the issue before the Municipal authorities for consideration and for the reason I was required to defer the commencement of the work. In the circumstance, I submitted necessary application seeking extension of time to complete the work, which are available in the concerned file kept in the office of the respondents, viz P.W.1-9122/2010. The allegation in the counter affidavit of the respondents that, I did not seek for

extension of time is therefore not correct.

5. Subsequently I was informed by the Municipal authorities orally that the modifications suggested by the Ward member to reconstruct the nursery school was dropped and accordingly I was directed to proceed with the work in terms of Ext.P2. The said work was completed by me during by January, 2013 and the Municipal authorities have verified the work. It is understood that the final bill in respect of the work covered by Ext.P2 work memo is ready with the Municipal authorities, which is only to be disbursed without awaiting orders from this Hon'ble Court.

8. It is submitted that the respondents are pleading ignorance about the completion of the work covered by Ext.P3 order for the reason that, the file viz.PW1-5639/10 relating to the aforesaid work is missing from the office of the 1st respondent. The concerned section staff has orally informed me that the bills relating to the work covered by Ext.P3 order could not be prepared in the absence of the connected file. It is submitted that the amounts due to me in respect of the work covered by Ext.P3 order is not disbursed for the sole reason that the relevant file relating to the work is conspicuously missing from the office of the 1st respondent."

5. There is no gainsaying the well established legal principle that there can be no recourse to public law remedy in non-statutory contractual matters, when there are disputed questions of fact. In other words, this Court has consistently

held that even in contractual matters, if there is no dispute on factual front or the amounts are admitted to be due, a mandamus can be issued to the respondent authorities.

6. It is evident from the counter affidavit filed by the respondents 1, 2 and 3 that in terms of averments made in para 8, the respondent-Municipality has admitted that the petitioner successfully completed one work out of two, and that he is entitled to payment in that regard. In so far as the second work is concerned, though prima facie it seems to have been completed, the bone of contention is that its subsequent completion beyond the allotted time was without any further sanction by the respondent-Municipality. At any rate, this contention has been specifically denied by the petitioner in his reply affidavit. Suffice it to observe that this Court consciously refrains from entering in to the arena of disputed questions of fact, lest it should cause prejudice to either of the parties in any future proceedings.

7. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner and the learned standing counsel for the respondent-

Municipality, this Court dispose of the writ petition with a direction to the respondent-Municipality to comply with its undertaking as has been reflected in para 8 of its counter affidavit and pay the amounts due to the petitioner with regard to the work admittedly completed by the petitioner, as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment. In so far as the other work which finds mentioned in para 4 of the counter affidavit, the petitioner is at liberty to take recourse to appropriate judicial remedies, if advised. No order as to costs.

Sd/-
DAMA SESHADRI NAIDU,
JUDGE

//true copy//

P.A to Judge

smv