

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.07.2015
Delivered on: 03.08.2015

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.17064 of 2015

P.Arun Kumar

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
Represented by its Secretary,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St.George,
Madras.

2.The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore-641 001.

3.The City Engineer,
Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore-641 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to release a sum of Rs.8,37,000/- being the sum payable to the petitioner under the Contract No. Item No.7 of WTC (e) 17/2010 between the petitioner and the respondent together with interest at 24% p.a.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.Rm.Muthukumar,
Govt. Advocate for State Government

Mr.P.Tamil Mani for CMDA

Mr.R.Sivakumar, Standing Counsel
for Coimbatore Corporation

O R D E R

The petitioner would state that the services of his firm, namely M/s.Gowpatt Associates was engaged for the purpose of

constructing a retaining wall at the Nava India Scheme Road, Coimbatore in Ward No.17, during the World Tamil Conference, 2010. The petitioner, at the time of entering into the contract, made an Earnest Money Deposit of Rs.50,000/- with the second respondent and subsequently was called upon to make further payment of Rs.50,000/- under the said head and he has also complied with the same by submitting a demand draft dated 09.10.2010. The petitioner would further state that the respondents insisted the petitioner to furnish additional security deposit of Rs.6,12,000/- and it was also remitted, vide demand draft dated 09.10.2010 and the petitioner has completed the construction within the time stipulated to the satisfaction of the third respondent. However, the second respondent took a curious stand that the contract has not been completed satisfactorily and as a result, a sum of Rs.1,25,000/-, due and payable to the petitioner, has been retained as retention money. The petitioner, in this regard, has submitted representations dated 02.04.2013, 3.10.2013, 13.11.2013, 21.05.2014, 25.12.2014 and 30.05.2014 and inspite of receipt of the same, no response is forthcoming and hence, came forward to file this writ petition.

2. Mr.V.Raghavachari, learned counsel appearing for the petitioner would contend that with regard to the alleged unsatisfactory completion, the petitioner has not been communicated with any decision and the second respondent, for the reasons best known to them, retained a sum of Rs.1,25,000/- and the petitioner is entitled to Earnest Money Deposit of Rs.50,000/-, Security Deposit of Rs.50,000/- and Additional Security Deposit of Rs.6,12,000/-. It is further contended that the petitioner is also facing recovery proceedings from his banker, namely South Indian Bank, Regional Office, Chennai under the provisions of SARFAESI Act and therefore, requirement of funds is very urgent and hence, prays for appropriate orders.

3. Per contra, Mr.Rm.Muthukumar, learned Government Advocate appearing for the first respondent would contend that since unsatisfactory performance has been noted, amount has been retained as retention money.

4. This Court has carefully considered the rival submissions and also perused the materials placed before it.

5. Admittedly, no communication has been sent to the petitioner pointing out the alleged deficiency and it is not in serious dispute that the petitioner is entitled to the said amount, but for the alleged lapse. The petitioner has repeatedly sent representations to the second respondent, but the second respondent has never sent any reply either accepting or denying the claim. The second respondent, being an authority to perform public duty, is under mandate to send a reply to the petitioner in respect of the representation submitted by him, but he has kept quite so far. It is also not in serious dispute that recovery action has been initiated against the petitioner by the banker, namely South Indian

Bank, under the provisions of SARFAESI Act and therefore, his need and requirement is very urgent.

6. In the result, this writ petition is disposed of and the second respondent is directed to consider the representations submitted by the petitioner on merits and in accordance with law after providing him, an opportunity of personal hearing and pass orders within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

7. This Writ Petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

jvm

To

1.The Secretary,

The Government of Tamil Nadu,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St.George,
Madras.

2.The Commissioner,

Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore-641 001.

3.The City Engineer,

Coimbatore City Municipal Corporation,
Big Bazaar Street,
Coimbatore-641 001.

in W.P.No.17064 of 2015

svi(co)

pmk.3.8.2015

WEB COPY