

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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W.P.No.13722 of 2016

ORDER:

It is the case of the petitioner that though tender was called for in the year 2008 and work order came to be issued in favour of the petitioner on account of the various policy issues, the site was not handed over to the petitioner. As per the tender notice and as per the agreement, execution of the entire work ought to have been completed within four years. On account of more than eight years passed and nothing is moving, petitioner's Earnest Money Deposit and Security Deposit of a sum of Rs.27,56,12,000/- by way of various bank guarantees are being held up by the respondents.

The petitioner is incurring huge expenditure by way of commissions and also the expenses for renewing the bank guarantees; apart from that, petitioner is unable to participate in the future tenders in view of huge work on hand, besides losses suffered on idle men and machinery mobilized with the hope of grounding the work. The learned counsel further submits that a representation, dated 26-03-2016 detailing these aspects has been made to the 1st Respondent for favourable consideration.

The learned Government Pleader submits that it is the Chief Engineer – 3rd Respondent, who is authority to take a decision and the learned Government Pleader also fairly

submits that the project became a non-starter on account of the land acquisition.

Having considered the respective submissions and in the facts of the case, once the period of contract itself is over by afflux of time and further the project is a non-starter even after eight years on account of the land acquisition, *prima facie* it would be unreasonable even to enforce the contract. Under the normal circumstances, the Earnest Money Deposit is to show earnestness on the part of the petitioner in entering into the contract and executing the contract. In the present case, admittedly, the project is non-starter on account of the problems in land acquisition. However, it is for the respective authorities to take pragmatic view to take a decision.

In those circumstances, considering the fact that the petitioner had made the representation to the 1st Respondent and as the project of this nature involves taking certain policy decisions, liberty may be given to the petitioner to make a detailed representation to Respondent Nos.3 and 4 to take a decision and pass appropriate orders with respect to release of the bank guarantees furnished by the petitioner by taking into consideration of the fact that even if the project may be decided to be proceeded with, on account of passage of time, the design, the construction methodology, costs involved and the project provisions, thereby changing the entire project profile itself.

Accordingly, the Writ Petition is disposed of giving liberty to the petitioner to make a detailed representation to

Respondent Nos.3 and 4 and on such representation being filed, the Respondent Nos.3 and 4 are directed to take a decision and pass appropriate orders with respect to release of the bank guarantees furnished by the petitioner by taking into consideration of the fact that even if the project may be decided to be proceeded with,

on account of passage of time, the design, the construction methodology, costs involved and the project provisions, thereby changing the entire project profile itself. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J.

Date: 25-04-2016

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