

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.28823 of 2017

P.V.Parthasarathy

..Petitioner

Versus

1. Member Secretary,
Chennai Metropolitan Development Authority,
Gandhi-Irwin Road,
Chennai 600 008.
2. The District Collector,
Thiruvallur District,
Thiruvallur.
3. The Special Officer and Block Development Officer
(Village Panchayat), Aathur,
Sholavaram Panchayat Union,
Thiruvallur District.

..Respondents

Prayer: The Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to its proceedings No.Proc.No.LAP/165/2014, dated 02.08.2017 and quash the same and direct the first respondent to release a sum of Rs.5,30,364/- to the third respondent to settle the claim of the petitioner.

For Petitioner

: Mr.Irwin Aaroon
for M/s.Pais, Lobo and Alvares

For Respondents

: Mr.M.Karthikeayn (for R1)
Mr.R.Venkatesh, G.A. (for R2)
Mr.Rajendra Narasimhan (for R3)

ORDER

The petitioner has filed this petition to call for the records of the 1st respondent relating to its proceedings No.Proc.No.LAP/165/2014, dated 02.08.2017 and quash the same and direct the first respondent to release a sum of Rs.5,30,364/- to the third respondent to settle the claim of the petitioner.

2. The case of the petitioner is that the 1st respondent has sanctioned estimate for laying 14 roads at the rate of Rs.49,75,000/- and the 3rd respondent agreed to meet out 10% of the cost of the said 14 roads. On 12.09.2015, tender was issued and the petitioner's bid was accepted. Due to encroachment in Besthopalayam Burial Ground Road, the work cannot be carried out in that place, which was informed and the petitioner undertook to complete the remaining 13 roads. Unfortunately, the first respondent has deducted a sum of Rs.12,85,000/- instead of Rs.6,25,000/- as mentioned in the tender notice and the petitioner has pointed out the mistake and requested that error may be corrected. The petitioner prayed that the respondents may be directed to pay the balance amount due. According to the petitioner, the CMDA has to pay 90% of the amount as per the tender notification and the remaining 10% of the amount has got to be paid by the 3rd respondent-Panchayat.

3. Mr.Karthikeyan, learned counsel appearing for the 1st respondent-CMDA submitted that the initial total cost for laying 14 Cement Concrete Road was Rs.48,45,000/-, and by its communication dated 02.12.2013, it was resolved to pay a sum of 43,60,500/- (90% of the total estimated cost of Rs.48,45,000/-) and the balance amount would be paid by the Panchayat. As there is a revision on account of escalation of cost, etc., the total amount was increased to Rs.49,75,000/-. The CMDA has agreed to pay 90% of the original amount of Rs.48,45,000/-, taking into account the 14 roads and released a sum of Rs.43,60,500/-. As the 14th road could not be laid, i.e., Besthopalayam Burial Ground Road, out of Rs.48,45,000/-, being the tender amount, cost of that road at Rs.12,85,000/- will have to be deducted and out of the balance amount, 90% of the amount will have to be paid by the CMDA and the remaining 10% will have to be paid by the Panchayat.

4. The learned counsel appearing for the 3rd respondent-Panchayat submitted that they have paid more than Rupees five lakhs to the petitioner, which includes Rs.1,30,000/- over and above Rs.48,45,000/-. According to the learned counsel for the Panchayat, the excess amount of Rs.1,30,000/ has been paid and the first respondent will have to pay the amount due to the petitioner.

5. Heard both sides and perused the materials available on record.

6. It is not in dispute that the petitioner is the successful tenderer for laying of 14 roads in Aathur Village, Sholavaram Panchayat Union, Thiruvallur District and the same is allotted to him. Admittedly, Besthopalayam Burial Ground Road has not been laid on account of encroachment. Whether the Government has taken steps to remove the encroachment and demolish the building that is constructed has not been addressed. If no steps are taken to remove the encroachments, it has to be presumed that the respondents are perpetuating illegality for the benefits of the officials to collect money from the encroachers periodically during festive seasons. However, the petitioner has restricted the laying of road only with regard to 13 projects and completed the cement concrete road. The original tender cost of Rs.48,45,000/- for 90% of that amount works out to Rs.43,60,500/-. As per the original cost, for laying 13 roads cost works out to Rs.35,60,000/-, out of which the 1st respondent has to pay Rs.32,04,000/-, which they have paid. If there is any cost over run, it is to be borne by the local body concerned from its own funds. Even though there was revised proposal on 05.12.2014, the CMDA has not approved the revised proposal and the 3rd respondent has also paid a sum of Rs.5,69,485/- . Hence, the CMDA is perfectly justified in paying 90% of the sum of Rs.48,45,000/-, as project estimation was approved only for the aforesaid amount and not the cost of Rs.49,75,000/-. Since the Besthopalayam Burial Ground Road has not been laid, the total cost is Rs.35,60,000/- and 90% of

the same works out to Rs.32,04,000/-. According to the petitioner, the size of the road has been reduced from 553 metres to 233 metres in the Besthopalayam Burial Ground Road and that is the reason why the amount has been reduced from Rs.12,85,000/- instead of Rs.6,25,000/-. In any event, since the work has not been done, for the balance amount of revised proposal, the respondents will have to pay the amount and that the respondents cannot deduct Rs.12,85,000/- and at the most, it can be deducted at Rs.6,25,000/-, as the petitioner has completed the entire work with regard to the 13 roads. Since the 1st respondent has not approved the revised proposal, it is for the 3rd respondent to pay the cost due to the petitioner and the 1st and 2nd respondents are not liable to pay any amount. After adjusting the amount already paid to the petitioner by the 1st and 3rd respondents, the balance amount, if any, has got to be borne by the 3rd respondent and the said amount if any shall be refunded within 30 days from the date of receipt of a copy of this order.

7. With the above observations, the writ petition is disposed of.

No costs.

04.12.2017

Index : Yes / No
Internet Yes/ No
pvs

To

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