

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION No.28337 of 2016

M.S.Sivakumar ...Petitioner
Vs.

- 1.The District Collector,
Collectorate,
Tiruvannamalai District.
- 2.The Block Development Officer,
Vandavasi Taluk,
Tiruvannamalai District.
- 3.Keelkodungaloor Panchayat Union,
Rep.by its precedent,
Keelkodungaloor,
Vandavasi Taluk,
Tiruvannmalai District. ...Respondents

Prayer: This writ petition filed under Article 226 of the Constitution of India, to issue an order or direction in the nature of a writ of mandamus directing the respondents herein, especially the third respondent to pay the petitioner a sum of Rs.5,00,000/- (Rupees Five Lakhs only) along with interest @ 12 % p.a. from 01.02.2014 to till the date of payment for the construction of 5 shops in S.No.181/2, Keelkodungaloor village, Vandavasi Taluk, Tiruvannamalai District pursuant to the award of tender in favour of the petitioner dated 29.03.2013.

For Petitioner : M/s.Dakshayani Reddy

For Respondent : Mr.S.Diwakar,
Special Government Pleader (For R1)
M/s.A.Sri Jayanthi (For R2)
Mr.S.Gunasekaran (For R3)

ORDER

Heard M/s.Dakshayani Reddy, learned counsel appearing for the petitioner, Mr.S.Diwakar Special Government Pleader appearing for the first respondent, M/s.A.Sri Jayanthi, learned counsel appearing for the second respondent and Mr.S.Gunasekaran, learned counsel appearing for the third respondent.

2.The petitioner herein was a contractor who has been assigned the construction of five shops by the third respondent in pursuant to the resolution dated 24.12.2012. A tender was invited by the third respondent on 27.03.2013. The petitioner's tender was accepted on 29.03.2013. Thereafter, the petitioner has completed his work.

3.It appears that the place over which the construction was put up has been classified as a tank poromboke. The erstwhile President, who took possession of the building after construction from the petitioner appears to have been rented it out to various persons but not paid the amount to the Treasury as seen from the proceedings of the second respondent in Na.Ka.No.A3/3172/2015, dated 09.03.2017.

4.The first respondent on inspection in pursuant to the order passed by the Division Bench of this Court in a Public Interest Litigation filed, found that the construction has been put up over a place which has been classified as a tank poromboke. However, a proposal was sent to the higher authorities for approving the construction made though with retrospective effect which is still pending consideration. It was done in pursuant to the order of the first respondent dated 07.10.2015. Though the petitioner has completed the work he was not paid the requisite amount due to him and hence the present writ petition.

5.In the counter affidavit two objections has been raised. The first is pending approval in pursuant to the order of the first respondent dated 07.10.2015 followed by the proposal sent by the Sub Collector, Cheyyar for approval. The second is with respect to the formal handing over the building after submitting the completion report.

6.As rightly submitted by the learned counsel appearing for the petitioner that both the grounds cannot be sustained. The petitioner has participated in the tender invited by the third respondent, it was proceeded by the resolution passed by the third respondent on 24.12.2012. The proceedings dated 09.03.2017 asking the erstwhile President to pay the amount said to have been misappropriated by her after letting the building the various third parties would clearly indicate the completion of the construction and subsequent usage of the building. Therefore, the objections are nothing but a mere after thought and the construction has been over long time back. Till now, the second respondent has not taken any steps to ask the petitioner for the completion certificate and for formal handing over. When even according to the second respondent, the third respondent has taken over and rented it out to five persons, it

is not open to him to ask the petitioner to formally hand over the building. Factually, the inspection has also been made by the first respondent which is followed by the proposal sent by the Sub Collector. Further, the pendency of the suit as noted in the counter affidavit has got no relevancy since it has been filed for permanent injunction not to put up any construction which is admittedly over.

7. In such view of the matter, this Court is of the view that it is a fit case where the respondent will have to be directed to make the payment due to the petitioner for completing the construction work within a period of eight weeks from the date of receipt of a copy of this letter.

8. With the above direction, the writ petition is disposed of. No costs.

Sd/-
Asst. Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The District Collector,
Collectorate,
Tiruvannamalai District.

2. The Block Development Officer,
Vandavasi Taluk,
Tiruvannamalai District.

+1 cc to Mr. S. Gunasekaran, advocate, sr. 20275

+1 cc to Govt. Pleader, sr. 20844

+1 cc to Mr. Dakshayani Reddy, advocate, sr. 21063.

rsi(co)
krd 17/4

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