

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.34404 of 2003
and
W.M.P.No.41763 of 2003

R.Saravanan

... Petitioner

Vs

Commissioner,
Ramnad Municipality,
Ramnad.

... Respondent

Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, praying to call for the records relating to the order No.Na.Ka.3485/2003/A3 dated 13.11.2003 and the consequent notice No.Na.Ka.No.93/2003/A3 dated 18.11.2003 passed by the respondent herein quash the same and to direct the respondent to pass orders and to deduct a sum of Rupees one thousand five hundred per day from 06.06.2003 to 10.08.2003 i.e. Rupees Ninety Seven thousand Five hundred out of Rupees Two lakhs forty thousand as the balance amount payable to the respondent.

For Petitioner : Mr.Md.Ibrahim Ali

For Respondent : Mr.Akhil Akbar Ali
Government Advocate

O R D E R

The petitioner has come forward with this petition praying to direct the the respondent to pass orders and to deduct a sum of Rs.1,500/- per day from 06.06.2003 to 10.08.2003 i.e. Rs.97,500/- out of Rs.2,40,000/- as the balance amount payable to the respondent and to quash the order No.Na.Ka.3485/2003/A3 dated 13.11.2003 and the consequent notice No.Na.Ka.No.93/2003/A3 dated 18.11.2003.

2.The case of the petitioner is that there was a tender for the financial year 2003-2004 for leasing out the right to collect charges for using toilet and the said period of tender was from 01.04.2003 to 31.03.2004. The petitioner is the highest tenderer and the lease was granted to the petitioner

on payment of Rs.5,40,000/- and the petitioner has paid a sum of Rs.3,00,000/- as security deposit along with an application on 10.02.2003. The respondent accepted the tender process and asked the petitioner to pay the balance amount. In the meantime, yet another tender was issued for the purpose of renovating the toilet and one S.Gunasekaran was the successful tenderer and it was stated that the renovation work should be completed as expeditiously as possible. Since the contractor Gunasekaran did not complete the work, the Commissioner, Ramnad District, warned and informed him to complete the work. The petitioner stated that, though the contractor has completed the work, after renovation, the toilet was handed over to him only on 10.08.2003. Eventhough, he is a successful tenderer, the toilets could not be handed over to him prior to 10.08.2003, and demanding money prior to that on the basis of the contract entered may not be correct. He submitted that he has paid excess amount and the respondent shall be directed to refund a sum of Rs.97,500/- for the period between 06.06.2003 to 10.08.2003. He further submitted that as the toilets have been handed over as per the tender notification only on 10.08.2003, the respondent could not demand any money and that they are bound to refund the amount lying with them.

3.The respondent has filed a counter, wherein it has been stated that the petitioner was a successful tenderer for the period from 01.04.2003 to 31.03.2004 and the lease was granted to him for a sum of Rs.5,40,000/- and as the petitioner has paid the initial amount, he was asked to pay the balance amount. It is also stated in the counter that the respondent issued another tender to renovate toilet on 21.01.2003 and the same was allotted to Gunasekaran and on completion of the renovation work, the toilets were handed over to the petitioner on 10.08.2003.

4.The petitioner also made a representation with regard to the demand of Rs.1,000/- per day due to loss caused on account of rennovation work and that the said representation was directed to be disposed of by this Court by an order dated 06.10.2003 in W.P.No.27451 of 2003 and it was rejected by the respondent on 18.11.2003, which is the subject matter of this writ petition.

5.The respondent also relied upon clause No.41 of the lease agreement, which is extracted below:

"41.குத்தகையில் நஷ்டம் நேர்ந்தாவது அல்லது வேறு காரணங்களிலாவது குத்தகை தொகையில் வஜா கேட்க குத்தகைக்காரருக்கு பாத்தியத்தை கிடையாது. ஒப்படைக்கப்பட்ட கட்டிடங்களை மராமத்து செய்வதன்னாலாவது அல்லது ஏதாவது ஒப்பந்ததாரருக்கு இடைஞ்சல் ஏற்பட்டால் அதற்காக நஷ்ட ஈடு கேட்கக் கூடாது."

He further contended that for the loss suffered by the petitioner, he cannot claim compensation for refund of the amount.

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

7. It is not in dispute that for the lease of maintaining of the toilets between 01.04.2003 to 31.03.2004, the petitioner was a successful tenderer and the petitioner has paid part amount and thereafter, there was a demand by the respondent for depositing the balance amount. It is also not in dispute that the subsequent tender was issued for renovation of toilets, which was given to one Gunasekaran and thus after renovation work, the toilets have been handed over to the petitioner on 10.08.2003.

8. The issue in this writ petition relates to Clause 41 of the tender notification dated 30.01.2003, extracted supra, shows as to whether the petitioner is justified in demanding payment of Rs.97,500/- during which no work was allotted to him, is correct or not. Though the pleading appears to be on the basis that there was a loss, the contention of the respondent is that if there is any loss as per Clause 41, the petitioner is not entitled for any relief. This contention is correct provided the work was given to the petitioner on 01.04.2003. If the petitioner has carried out his work partially on 01.04.2003 and thereafter another contract for renovation was given and in that process, there was a loss to the petitioner, definitely the petitioner would not be entitled to any relief sought for in this writ petition. That is not the case here. Neither in the counter nor in the affidavit, it is stated that the work has been given to the petitioner on 01.04.2003. The admitted case of both the parties is that even though the petitioner was a successful tenderer, the work for which tender was given for collection of charges was handed over to the petitioner only on 10.08.2003. As the petitioner is allotted work only on 10.08.2003, no amount can be charged/collected from the petitioner for the period prior to 10.08.2003. If there is any loss after 10.08.2003 invoking Clause 41 will be perfectly justified. Hence, I find a prima facie case in favour of the petitioner. The amount of Rs.97,500/- for 72 days shall be refunded to the petitioner within 45 days from the date of receipt of copy of this order. If the amount is not refunded within the time stipulated supra, the respondent shall pay interest at 12% p.a., from 01.04.2004 and the entire interest portion can be recovered from the personal funds of the respondent/Commissioner, Ramanathapuram Municipality, Ramanathapuram District.

9. Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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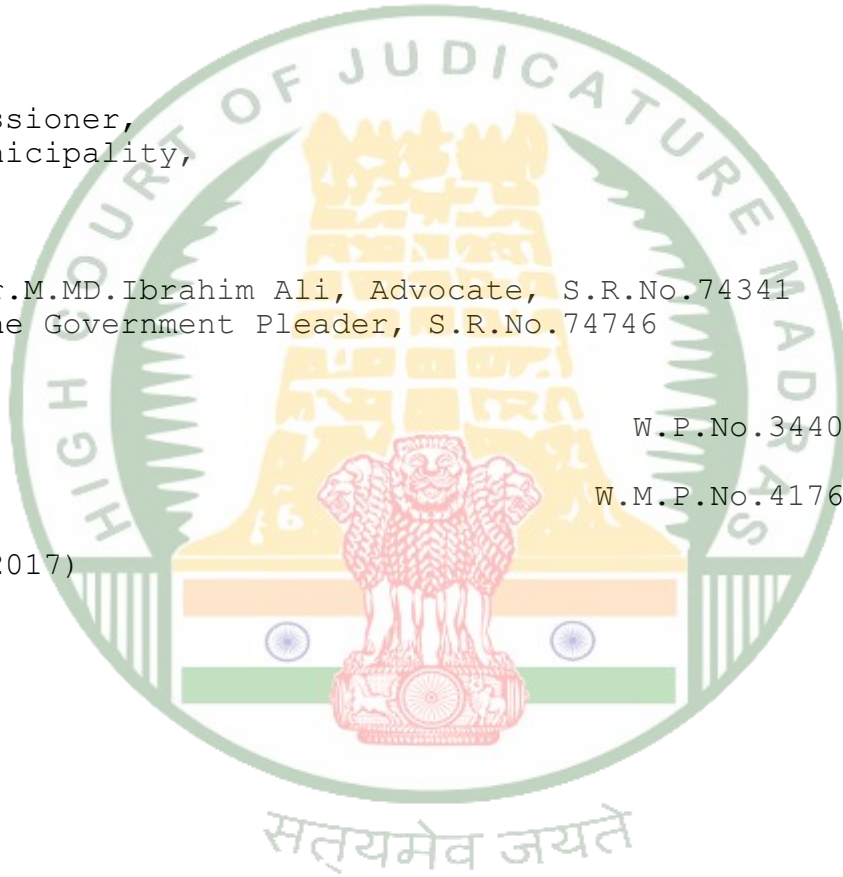
To

The Commissioner,
Ramnad Municipality,
Ramnad.

+1cc to Mr.M.MD.Ibrahim Ali, Advocate, S.R.No.74341
+1cc to the Government Pleader, S.R.No.74746

W.P.No.34404 of 2003
and
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RR(CO)
CA(20/11/2017)



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