

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03/04/2018
Delivered on	05/04/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.6184 of 2018 &
W.M.P.No.7642 of 2018

M/s.Subaya Constructions Co.Ltd.,
Rep. by its Director Mrs.S.Meenakshi,
No.21, Soundarapandian Salai,
Ashok Nagar, Chennai - 600 083. ... Petitioner

Vs.

- 1.The Commissioner,
Vellore City Municipal Corporation,
Infantry Road,
Vellore - 632 001.
- 2.The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazar 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 to direct the second respondent to forthwith issue necessary genuineness certificate to the first respondent of the work completion dated 17.09.2016 issued by the second respondent to the petitioner with regard to the Under Ground Sewerage Scheme to Coimbatore City Municipal Corporation Package I.

For Petitioner : Mr.ARL.Sundaresan, Senior counsel
For Mr.B.Natarajan

For Respondents : Mr.S.Silambanan, Senior Counsel
For Ms.P.Shanthi, Standing Counsel for R1

Mr.R.Sivakumar, Standing Counsel for R2

O R D E R

Heard Mr.ARL.Sundaresan, learned Senior counsel, representing Mr.B.Natarajan, learned counsel for the petitioner; Mr.S.Silambanan, learned Senior Counsel, assisted by Ms.P.Shanthi, learned Standing Counsel for the first respondent, Mr.R.Sivakumar, learned Standing Counsel for the second respondent and perused the records.

2. The prayer in the Writ Petition is to issue a Writ of Mandamus directing the second respondent to forthwith issue necessary genuineness certificate to the first respondent for the Work Completion Certificate dated 17.09.2016 issued by the second respondent with regard to the Under Ground Sewerage Scheme to Coimbatore City Municipal Corporation Package I.

3. The petitioner Construction Company has stated that it participated in the tender called for by the second respondent in Under Ground Sewerage Scheme to Coimbatore City Municipal Corporation Package-I in the year 2009 and was successful bidder. The petitioner successfully executed and completed the tender project on 28.08.2015 and received all the payments as per the running Bills for the project.

4. The petitioner would further state that the second respondent issued the Work Completion Certificate dated 17.09.2016. The petitioner has now participated in the tender for providing sewerage collection scheme in the first respondent Corporation and submitted required documents, including the Work Completion Certificate issued by the second respondent dated 17.09.2016. The first respondent in order to verify the genuineness of the Work Completion Certificate, sent a letter in this regard on 23.02.2018. Since it was delayed a reminder was sent on 09.03.2018. Despite receipt of the letters, the second respondent did not respond, hence, the petitioner issued a legal notice dated 03.03.2018, but no reply forthcoming. Hence, the present Writ Petition.

5. The second respondent has filed a counter stating that pursuant to the letter of the first respondent dated 23.02.2018, the second respondent had already sent a reply on 16.03.2018. Hence, the prayer sought for in the Writ Petition has become infructuous.

6. It is further stated that as per the agreement dated 05.08.2009, the Chief Engineer, Office of the Commissioner of Municipal Administration, Chennai is the competent authority for approval of any completed work. The Chief Engineer by his proceedings dated 19.01.2016 had approved the work completion project, subject to certain conditions. As per the agreement dated 05.08.2009, the Defects Liability Period is for five years

for issuance of the Work Completion Certificate. By a letter dated 09.11.2016, the petitioner was informed to co-ordinate with his team of technical staff to effect the work relating to individual house connection. Following which, a further letter dated 08.02.2017 was issued to the petitioner to attend the missing links between the chamber and collection system at Ward Nos.74 to 79, 85 & 86. After identifying many more defects, notices dated 12.07.2017, 20.12.2017 were issued, but the writ petitioner has not shown any interest to either to attend those defects or at least to answer to any of the above mentioned office letters.

7. The learned Senior Counsel for the petitioner submitted that as per the agreement dated 05.08.2009, the petitioner had successfully executed the work and a Work Completion Certificate was issued on 17.09.2016. Now, the only issue is the second respondent has to respond whether the certificate is genuine or not. It is the contention of the learned Senior Counsel that if there is any defect in execution of the work with the second respondent, the petitioner has to attend as per the obligation in the agreement, which has to be dealt with separately and at this juncture, the second respondent cannot go into the performance or the quality of work done by the petitioner.

8. The learned Standing Counsel for the second respondent submitted that in spite of four communications from the second respondent, there was no response from the petitioner to carry out the defects pointed out by the second respondent that admittedly they have liable to maintain the works for a period of five years; that since the second respondent found the work executed by the petitioner was not satisfactory, sent a communication stating that the performance of the writ petitioner was found to be unsatisfactory; that the communication cannot be stated to be illegal and they cannot find fault with the second respondent, and that if at all, the petitioner has to challenge the communication in a separate Writ Petition.

9. In the instant case, the petitioner seeks direction to the second respondent to forthwith issue necessary genuineness certificate to the first respondent. Indisputably, the second respondent had already sent opinion regarding the execution of the work done by the petitioner in Coimbatore. Considering the issues involved in this case, the correctness of the reply does not require adjudication in the Writ Petition.

10. In view of the above facts, in my considered opinion, the prayer sought for in this Writ Petition has become infructuous. Accordingly, the Writ Petition is dismissed. There

is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

r n s

To

1.The Commissioner,
Vellore City Municipal Corporation,
Infantry Road,
Vellore - 632 001.

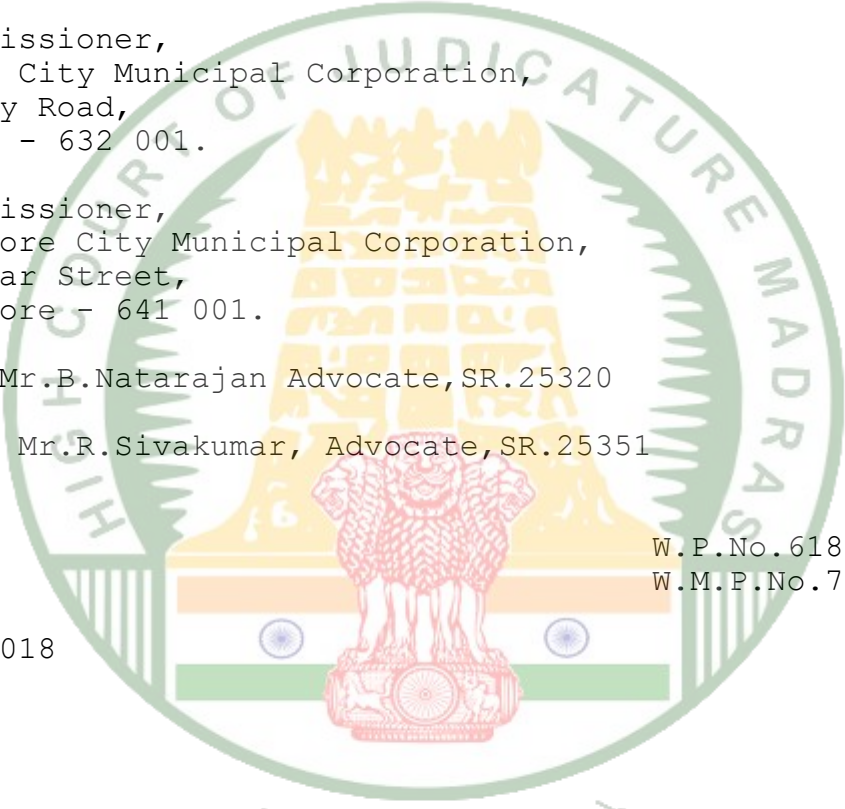
2.The Commissioner,
Coimbatore City Municipal Corporation,
Big Bazar Street,
Coimbatore - 641 001.

+ 1 cc to Mr.B.Natarajan Advocate,SR.25320

+ 1 cc to Mr.R.Sivakumar, Advocate,SR.25351

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