

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.38130 of 2004
and WPMP.No.45665 of 2004

J.Kamsala

... Petitioner

Vs.

1. The District Collector,
Kancheepuram District,
Kancheepuram.
 2. The Divisional Engineer,
Highways, Kallakurichi.
 3. The Tahsildar,
Kancheepuram Taluk,
Kancheepuram.
 4. The Superintending Engineer,
Highways, Villupuram Circle,
Villupuram.
- ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 2nd respondent in his proceedings Na.Ka.2740/99/A3, dated 05.11.2004 and quash the same.

For Petitioner : Mr.C.Ramesh

For Respondents : Mr.S.Sureshkumar, G.A.

O R D E R

This Writ Petition is filed to call for the records of the second respondent in his proceedings Na.Ka.2740/99/A3, dated 05.11.2004 and quash the same.

2. Stating sub standard work and delay as reasons, the petitioner's work order came to be cancelled, by way of an order dated 05.11.2004. The second respondent herein had also invoked the provisions of the Revenue Recovery Act for recovery of sum of Rs.15,49,829/- from the petitioner herein, which order is under challenge in the present Writ Petition.

3. It is case of the respondents that the arbitration clause in the contract between the petitioner and the respondents herein stipulates that the disputes can be referred for arbitration, when the monthly value does not exceed sum of Rs.2,00,000/-. Since the claim is over and above Rs.2,00,000/-, they need not invoke the arbitration clause and therefore, had claimed the alleged loss amount of Rs.15,49,829/-.

4. The learned counsel for the petitioner, on the other hand, submitted that the petitioner earlier filed petitions seeking for appointment of arbitrator in O.P.Nos.287 of 2002 and 738 of 2002. This Court, while disposing of the said Original Petitions had observed that the parties are free to approach the Court having competent jurisdiction for adjudicating the claims above Rs.2,00,000/-.

5. Apparently, the claim made by the respondents herein towards the alleged loss incurred is over and above Rs.2,00,000/-, and in view of the arbitration clause in the contract, the proper recourse would be to determine the compensation amount through Civil Court.

6. It is also seen that in the impugned order, before making recovery under the Revenue Recovery Act, no prior opportunity was extended to the petitioner herein. The order also does not clarify as to how the respondents had arrived the sum of Rs.15,49,829/- as actual loss.

7. In normal circumstances, when the respondents had chosen to claim compensation, it would be impediment on their part to explain as to how they have arrived at that amount and consequently, give an opportunity to the petitioner to put forth his objections, if any. In the absence of any such show cause notice, it can only be termed as a violation of the principles of natural justice.

8. In the light of the observations as well as the observations made by this Court in O.P.Nos.287 of 2002 and 738 of 2002, which order was reported in 2006 (2) LW 639 (Rajam Engineering Contractors vs. The State of Tamil Nadu and others), the respondents herein are granted liberty to approach the Civil Court to determine the compensation amount, if they choose to do so. Consequently, the impugned order dated 05.11.2004 in

proceedings Na.Ka.2740/99/A3 passed by the second respondent is quashed. The Writ Petition stands allowed with the above liberty to the respondents. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The District Collector,
Kancheepuram District,
Kancheepuram.
2. The Divisional Engineer,
Highways, Kallakurichi.
3. The Tahsildar,
Kancheepuram Taluk, Kancheepuram.
4. The Superintending Engineer,
Highways, Villupuram Circle,
Villupuram.

+1cc to Mr.C.Ramesh, Advocate sr.17981
+1cc to the Government Pleader sr.19361

W.P.No.38130 of 2004

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