

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.31491 of 2013

R.P.Balasubramani

..Petitioner

-Vs-

1.The District Collector,
Coimbatore District, Coimbatore.

2.The Chief Engineer,
Public Works Department,
Water Sources Body, (Pollachi Division),
Coimbatore Zone, Coimbatore District.

3.The Executive Engineer,
Public Works Department,
Water Sources Body,
(Noyyal - Orathupalayam Reservoir Scheme),
Lower Bhavani Drainage Division,
Erode.

4.The Assistant Executive Engineer,
Public Works Department,
Water Sources Body,
Lower Bhavani Drainage Division - 3,
Kangeyam, Tiruppur District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the 2nd respondent in Na.Ka.Lr.No.Rule 2(5)/004510/ 2010, dated 02.03.2011 and directing the respondents to pay Rs.5,40,000/- and deposit Rs.1,65,000/- with interest as on date. (Prayer amended as per order of this Court dated 20.08.2019 in W.M.P.No.24152 of 2019 in W.P.No.31491 of 2013)

For Petitioner : Mr.K.Selvaraj
for Mr.S.Kolandasamy

For Respondents : Mr.I.Sathish
Additional Government Pleader

O R D E R

The petitioner has come forward with this writ petition for issuance of a Writ of Certiorarified Mandamus, to quash the order of the second respondent in Na.Ka.Lr.No.Rule 2(5)/004510/2010, dated 02.03.2011 and consequently, to direct the respondents to pay Rs.5,40,000/- and deposit Rs.1,65,000/- with interest.

2. The petitioner would state that he is one among the second class contractors who had taken work from the respondents from 1982 onwards. He had taken two work contracts from the second respondent in the year 1987. The petitioner would claim that as per the agreement he has completed the first work of strengthening of the bund on the left side of the Noyyal Orathupalayam Reservoir and in respect of the second work he has completed 40% of the work and remaining work could not be completed, due to the objections raised by the land owners.

3. Mr.Selvaraj, learned counsel appearing for the petitioner would urge that the petitioner has totally deposited a sum of Rs.4,50,000/-, towards Caution Deposit for the first work, he is entitled for refund of entire sum and in respect of the second work, he is entitled for a sum of Rs.4,00,000/- out of Rs.10,00,000/-. But, the second respondent has arbitrarily rejected the claim of the petitioner and hence, the present writ petition has been filed.

4. Mr.I.Sathish, learned Additional Government Pleader by referring the counter affidavit filed by the fourth respondent would contend that the petitioner has not completed the works assigned as per the agreement and in respect of the work done by the petitioner, Rs.2,50,000/- was already paid. It is also stated that if there is any dispute, the petitioner has to seek his remedy only before the arbitrator, since the agreements contain arbitration clause.

5. I have heard the rival submissions made by the learned counsel on either side and perused the materials available on record.

6. In the case on hand, according to the petitioner, insofar as the first work, he had already completed the strengthening of the bund to an extent of 0 mts to 600 mts and in respect of the second work he had completed 40% of the work. The learned counsel for the petitioner brought to the notice of this Court, the letter issued by the Executive Engineer, P.W.D, Keezh Bhavani, Erode District-2, dated 13.07.2007, in support of his contention.

7. It is not disputed that the works were entrusted in the year 1986 and 1987 and the same were completed in the year 1987 itself. Therefore, it would not be appropriate now to refer the petitioner to arbitration proceedings.

8. It is mainly contended that the material documents were not considered by the 2nd respondent before rejecting the claim of the petitioner. The learned counsel for the petitioner prays to remand the matter for reconsideration. Considering the above facts, the order impugned in this writ petition is set aside and the matter is remitted back to the second respondent, who shall consider the case afresh and pass appropriate orders on merits and in accordance with law, within a period of eight weeks, from the date of receipt of a copy of this order.

9. Accordingly, the writ petition is allowed. However, there shall be no order as to costs.

ms

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Collector,
Coimbatore District, Coimbatore.
- 2.The Chief Engineer,
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- 4.The Assistant Executive Engineer,
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Water Sources Body,
Lower Bhavani Drainage Division - 3,
Kangeyam, Tiruppur District.

+1cc to the Govt.Pleader, Vide Sr.No.76151

W.P.No.31491 of 2013

Kak(31/10/2019)