

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2019

CORAM:

THE HON'BLE MR. JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

W.P.No.24569 of 2019

Rajaprabhu

... Petitioner

vs.

1. The Engineer-in-Chief,
WRD & Chief Engineer (General),
Public Works Department,
Chennai.
2. The Executive Engineer,
Public Works Department,
Water Resource Department,
Mining and Monitoring Circle,
Viluppuram - 605 602.
3. The Superintendent Engineer, WRD,
Mining and Monitoring Circle,
Chennai 600 005.
4. M.K.M.S.Constructions, Contractors,
Door No.4/69, Kamaraj Road,
Arakandanallor,
Viluppuram District.
5. The Revenue Divisional Officer,
O/o.Revenue Divisional Office,
Harur, Dharmapuri District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a writ of Mandamus, calling for the records pertaining to the impugned order bearing No.KA.EN:76/VaPi/Koo.115/2019-20,/E/VaA/ dated 17.07.2019 passed by the 2nd Respondent and to quash the same, consequently direct the Respondents 1 to 3 to permit the Petitioner to carry out the work in the light of the contract entered on 13.12.2018 vide Agreement No.34/M & M Circle/2018-2019.

For Petitioner : Mr.L.Chandrakumar
for Mr.A.Selvendran

For Respondents 1 to 3 : Mr.Akhil Akbar Ali,
Government Advocate

For 4th Respondent : Mr.D.Ravichander

O R D E R
(Order of the Court made by M.M.SUNDRESH,J.)

The Petitioner was given licence to carry on quarrying operation through the Agreement No.34/M & M Circle/2018-2019, dated 13.12.2018. As the Petitioner did not comply with the terms and conditions of the Agreement, notices were issued to him by the 2nd Respondent on various dates, on 18.02.2019, 28.02.2019, 09.03.2019, 12.03.2019, 23.03.2019, 26.04.2019, 03.05.2019, 11.06.2019, 18.06.2019, 09.07.2019 and 17.07.2019.

2. Even thereafter, the Petitioner did not rectify the anomalies pointed out. Thus, a final notice was issued to the Petitioner on 09.07.2019. Thereafter, the Agreement dated 13.12.2018 was cancelled by the 2nd Respondent by the impugned order dated 17.07.2019. Needless, it is to state that, the said Agreement also contains the Arbitration clause. If the claim exceeds Rs.50,000/-, the remedy available to the parties has been indicated by way of a regular Civil Suit. Assailing the impugned order dated 17.07.2019, the present Writ Petition has been filed.

3. Pursuant to the Cancellation Order dated 17.07.2019, fresh tender notice was issued on the very next day i.e. on 18.07.2019. Thereafter, the work was allocated to the 4th Respondent, who is stated to have been doing quarrying operations as of now.

4. Learned counsel for the Petitioner submitted that the impugned order cannot be sustained in the eye of law, as the Petitioner has not been given sufficient opportunities before passing the Cancellation Order. As the Cancellation Order has got civil consequences and as there is violation of principles of natural justice, the same is liable to be set aside. He further submitted that, alternative remedy by way of invoking Arbitration clause or going by way of a Civil Suit, does not arise for consideration. The averment made in the Affidavit filed by the 2nd Respondent with regard to quarrying operations, is also not correct and, it is the Petitioner, who has to do

quarrying operations. Therefore, according to him, the Writ Petition has to be allowed.

5. Learned Government Advocate appearing for the official Respondents and the learned counsel appearing for the 4th Respondent, submitted that, much water has flown under the bridge, after the Cancellation Order, as licence has been given in favour of the 4th Respondent, through tender. It is the 4th Respondent, who is doing quarrying operations as of now. In any case, the terms and conditions of the Agreement would govern. Therefore, the Petitioner will have to file a Civil Suit, if so advised. It is a case where the Petitioner has not complied with the conditions on his part, as per the Agreement, despite various notices issued. Also, the lorry belonging to the Petitioner was involved in illegal activities. Therefore, the Writ Petition will have to be dismissed.

6. We do not wish to say much on the Cancellation order. As such, the Cancellation Order would affect the rights of the Petitioner. However, the remedy available to the Petitioner is by way of a Civil Suit, which has also been agreed upon between the parties.

7. We also find that the disputed question of facts are involved, as could be seen from the Reply Affidavit filed by the Petitioner, against paragraph 6 of the Affidavit filed by the 2nd Respondent. It is not as if, the impugned order has been passed without affording an opportunity to the Petitioner. The Petitioner has been given quite a number of opportunities before passing the impugned order. Now, the third party interest has also crept in.

8. Perhaps, the Petitioner can get a better remedy in the Civil Court also, for the reason that he can seek for compensation. Under the provisions of the Transfer of Property Act, the party who has a licensing Agreement, cannot seek for compliance from the other side, when the same is determinable in nature. Admittedly, the Agreement involved is certainly determinable in nature. Perhaps, that is the reason as to why it has been indicated in the Agreement itself that, the remedy for the parties lies before the Civil Court.

9. Thus, looking from any perspective, we are not inclined to allow this Writ Petition. Accordingly, this Writ Petition stands dismissed. Further, all the issues are left open to the parties to agitate in the Civil Suit, if so filed. No costs. Consequently, connected W.M.P.Nos.24247 and 24306 of 2019 are closed.

10. We make it clear that even on the issue of want of notice, our observations are only prima facie, and the Civil Court is at liberty to go into it, in depth.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Engineer-in-Chief,
WRD & Chief Engineer (General),
Public Works Department, Chennai.
2. The Executive Engineer,
Public Works Department,
Water Resource Department,
Mining and Monitoring Circle,
Viluppuram - 605 602.
3. The Superintendent Engineer, WRD,
Mining and Monitoring Circle,
Chennai 600 005.

+1cc to Mr.A.Selvendran, Advocate, SR.No.93559.
+1cc to Mr.D.Ravichander, Advocate, SR.No.93426.
+1cc to Government Pleader, SR.No.93479.

Order in
W.P.No.24569 of 2019

PA (CO)
CSR(17/12/2019)

