



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.P.SAHI, CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.[MD]No.1384 of 2011

and

M.P.(MD) No.1 of 2011

R.Janaki

: Appellant/ Petitioner

Vs.

1) The Project Director (Tsunami),
Ezhilagam,
Beach Road, Chepauk,
Chennai 600 005

2) The District Collector,
Ramanathapuram District,
Ramanathapuram.

3) The Additional Collector,
Project Coordinator,
District Implementation Unit (Tsunami),
Ramanathapuram.

: Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 04.08.2011 passed in W.P(MD)No.5628 of 2008.

Prayer in WP(MD). 5628/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus, calling for the records relating to the order passed by the 3rd respondent in his proceedings Roc. No. 1777/DIU3/2006 dated 11/06/2008 (served to the petitioner on 18/06/2008) and quash the same and also direct the respondents to return the security Deposit of Rs. 10,52,000/- remitted by the petitioner by way of bank guarantee lying with the Tamil Nadu Mercantile Bank, sayalkudi and also to direct the respondents to pay the interest at 12% per annum on the above said amount till date of payment to the petitioner.

For Appellant

: Mr.I.Irulappan

For Respondents

: Mr.VR.Shanmuganathan,
Special Government Pleader



J U D G M E N T

[Judgment of the Court was delivered by **SUBRAMONIUM PRASAD, J.**]

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The writ petitioner is the appellant. The writ petitioner has challenged the order dated 11.06.2008 terminating the contract entered into between the petitioner and the State Government for construction of 180 houses called Tsunami Rehabilitation House under Rajiv Gandhi Rehabilitation Programme at TSUNAMI hit areas.

2. Stating that the petitioner has not even commenced the work for the majority of the houses, the contract was terminated and the earnest deposit of Rs.10,52,000/-, which was lying with the State as bank guarantee, was forfeited. The learned Single Judge, by the impugned order, refused to entertain the writ petition stating that there are disputed questions of facts and therefore, the parties must invoke the Arbitration Clause.

3. The appellant before us states that the site was not handed over and therefore, he was not able to start the work. This fact is stoutly contested by the learned counsel for the respondents.

4. It is well settled that the Writ Court cannot traverse into the disputed questions of facts and adjudicate the same only on the basis of the affidavit. The order of the learned Single Judge refusing to entertain the writ petition cannot be interfered with and the Writ Appeal stands dismissed. The parties have to invoke the arbitration clause. However, this will not preclude the appellant petitioner from making any representation on the issue, whether the site was actually handed over or not.

5. At this juncture, it is stated by the learned counsel for the appellant petitioner that they have already given a representation dated 08.10.2016 to this effect and it is for the Government to consider the same and dispose it of within a period of four weeks from the date of receipt of copy of this order. However, there shall be no order as to costs. Consequently, connected M.P. (MD) No.1 of 2011 is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



To

1) The Project Director (Tsunami),
Ezhilagam,
Beach Road, Chepauk,
Chennai 600 005

2) The District Collector,
Ramanathapuram District,
Ramanathapuram.

3) The Additional Collector,
Project Coordinator,
District Implementation Unit(Tsunami),
Ramanathapuram.

+1 CC to Mr.RAJA.KARTHIKEYAN, Advocate (SR-105465[F] dated 17/12/2019)

+1 CC to SPL.GP (SR-105589[F] dated 18/12/2019)

JUDGMENT MADE IN
W.A. [MD]No.1384 of 2011
17.12.2019

VB(03.01.2020) 3P 6C