



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

AND

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A(MD)No.776 of 2019

and

C.M.P. (MD)No.6829 of 2019

The Commissioner,
Nagercoil Municipality,
Nagercoil.

:Appellant/2nd respondent

.vs.

1.Y.Jeyasingh

:1st Respondent/Writ Petitioner

2.The District Collector,
Collectorate, Nagercoil.

:2nd respondent/1st respondent

3.The Commissioner of Municipal Administration,
Ezhilagam, Cheppakkam,
Chennai -600 005.

4.The Regional Director,
Municipal Administration,
Thiruchendur Road,
Tirunelveli.

:Respondents 3 and 4/
Respondents 3 and 4

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.19252 of 2018, dated 10.12.2018.

Prayer in WP(MD). 19252/ 2018 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents to provide the amount of Rs. 19,50,000/- (Rupees nineteen lakhs and fifty thousand only) with interest towards the completion of the road work of the service road of distillery road of Nagercoil, in ward No 28 of Nagercoil Municipality by considering the representation dated 27.07.2018 within the time stipulated by this Honble Court.



For Appellant

:Mr.V.R.Shanmuganathan
Special Government Pleader
for
Mr.P.Aathimoolapandian

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:Mr.M.Ashok Padma Raj

JUDGMENT

[Judgment of the Court was delivered by
SENTHILKUMAR RAMAMOORTHY, J.]

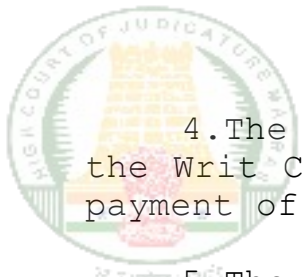
This writ appeal is directed against the order of the Writ Court made in W.P.(MD)No.19252 of 2018, dated 10.02.2018, whereby the writ petition filed by the first respondent herein was allowed. In the said writ petition, the first respondent herein prayed for a Writ of Mandamus to direct the respondents therein to pay a sum of Rs.19,50,000/- with interest towards completion of road work for the service road of distillery road of Nagercoil.

2.The facts that are necessary for the disposal of the writ appeal are briefly as follows:-

The first respondent herein is a registered Contractor and he was issued a work order for laying the road on the distillery road of Nagercoil in Ward No.28 of Nagercoil Municipality. After completion of work, the first respondent herein submitted bills and other documents and claimed a sum of Rs.19,50,000/- from the appellant herein. On account of non-payment of the said sum, the writ petition was filed.

In the counter filed in the writ petition, the appellant herein stated that the amount payable to the first respondent in respect of work done is a sum of Rs.17,34,720/- and not a sum of Rs.19,50,000/- as claimed by the petitioner therein. On that basis, the Writ Court proceeded to allow the writ petition and directed the appellant herein to pay the balance amount within a period of twelve weeks from the date of receipt of a copy of that order. It is further held therein that if there is any dispute regarding the finality of the bill, it is left open to the writ petitioner to agitate the same before the concerned respondent in the manner known to law.

3.We heard the learned Special Government Pleader appearing for the appellant and the learned counsel appearing for the first respondent/writ petitioner. By consent, the main writ appeal itself is taken up for final disposal.



4.The main question that arises for consideration is whether the Writ Court was correct in granting a Writ of Mandamus for the payment of money in respect of a work order for laying a road?

5.The learned Special Government Pleader appearing for the appellant submitted that although it is correct that a sum of Rs.17,34,720/- is payable for the work done by the first respondent as per the contract, there were defects in the said work and that the said defects had to be rectified by the first respondent. He further submitted that a sum of Rs.6,55,969/- was incurred as the expenditure towards carrying out such rectification work. He also submitted that out of the net sum of Rs.10,84,751/-, after taking into consideration the expenditure incurred on rectification work, a sum of Rs.7,45,000/- was paid to the first respondent on 18.07.2019 thereby leaving a balance outstanding of only Rs.3,33,751/-. Consequently he submitted that the appellant is willing to pay the said sum of Rs.3,33,751/- to the first respondent and that the further claims of the first respondent are disputed.

6.On the contrary, the learned counsel for the first respondent submitted that the appellant had categorically admitted its liability to pay the sum of Rs.17,34,720/- during the course of hearing of the writ petition and that the claim that a sum of Rs.6,55,969/- was incurred as expenditure for rectification work was not made while the writ petition was heard, although the said work is said to have been carried out in September, 2018. Therefore, he submitted that the admitted sum of Rs.17,34,720/- is payable by the appellant and that the order of the Writ Court may be confirmed.

7.Upon examining the affidavits, documents and considering the oral submissions, it is clear that this is a dispute relating to the completion of work in respect of a road project and there are disputed questions of fact. Therefore, we are of the considered view that it is not an appropriate case for the exercise of discretionary jurisdiction under Article 226 of the Constitution of India in respect of such disputed claims. The first respondent herein should initiate appropriate proceedings before the Civil Court in order to establish his rights with regard to the disputed monetary claim. However, in view of the fact that the appellant herein has admitted that there is a net sum of Rs.3,33,751/- which is due and payable to the first respondent and has also filed a memo of calculation to the said effect, the said sum may be directed to be paid to the first respondent.

8.For the reasons stated above, the order of the Writ Court is liable to be set aside. Accordingly, the Writ Appeal is allowed by directing the appellant to pay the admitted sum of Rs.3,33,751/-



to the first respondent within one week from the date of receipt of a copy of this order. As regards the disputed claims, leave is granted to the first respondent to initiate appropriate legal proceedings in that regard. No costs. Consequently, connected Miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The District Collector,
Collectorate,
Nagercoil.
2. The Commissioner of Municipal Administration,
Ezhilagam, Cheppakkam,
Chennai -600 005.
3. The Regional Director,
Municipal Administration,
Thiruchendur Road,
Tirunelveli.

+1 CC to Mr.P.ATHIMOOLAPANDIAN, Advocate SR-78543.

+1 CC to Mr.ASHOK PADMARAJ, Advocate SR-78620.