

03.08.2021
Court No. 19
Item no.07
CP

WPA 9889 of 2021

Ashit Palit

Vs.

West Bengal State Rural Development Agency & ors.

(via video conference)

Mr. Debasish Ghosh

Mr. Nilanjan Adhikari

....for the petitioner.

Mr. Ranjit Rajak

.....for the State respondents.

Mr. Tapash Kumar Mondal

....for the respondents 3, 4 & 5.

The petitioner claims refund of the security deposit which was made when the petitioner participated in the tender issued by the W.B.S.R.D.A., South 24 Parganas District Unit. Admittedly, the work could not progress beyond a certain point because of the violent protest of the persons of the locality.

Records reveal that there is a communication from the Executive Engineer & Head of PIU, W.B.S.R.D.A., South 24 Parganas District Unit to the Chief Engineer, P & RD Department with the proposal for termination of the work.

The petitioner contends that neither has the Chief Engineer taken a decision for honourable termination of the contract nor is the contractor in a

position to complete the work. The petitioner submits that part of the work was completed and some bills have been paid. However, the entire thing is now in a state of limbo.

The learned advocate for the Zilla Parishad also submits that the contentions of the petitioner is correct. There were disturbances on account of which the work could not be completed. There was also a proposal for termination of the remaining work but unless and until the Chief Engineer, P & RD Department takes a decision on the issue, the security deposit cannot be refunded.

Inaction and inability of the tender issuing authority to provide a peaceful and undisturbed atmosphere for the contractor to complete the work has caused suffering to the petitioner. Learned advocate for the Zilla Parishad very fairly submits that the Zilla Parishad has already taken a decision that due to local unrest and violence, the work shall not progress any further.

Records also reveal that the tender issuing authority themselves are mindful of terminating the work because of the unrest.

Learned advocate appearing for the state hands up an instruction from the Superintending Engineer, P & RD Department, Government of West Bengal. He submits that despite serious efforts made

by the respondent No. 2, to ensure completion of the work, the work could not be completed because of agitation. It is also true that the respondent no. 3 had given a proposal for honourable termination but the respondent no. 2 has not taken any decision on such request/proposal for reasons not disclosed in their instructions. The instructions filed by the State respondents is taken on record.

The contractor has invested money. The contractor is a businessman. He cannot allow his money to lie wasted in a project which has no guarantee of being completed. In the pandemic situation, when small businessmen have suffered irreparable loss, holding back the money of the contractor seems unfair, specially when there is already a proposal for termination from the person who is in charge of the project. The court cannot understand why the matter cannot be ended honourably and the contractor cannot be refunded the security deposit as it is an admitted position that the security deposit can be refunded if there is an honourable termination of the contract. Moreover, it is the admission of the respondents themselves that the work could not be completed and there is no guarantee that the same would be completed in the near future. Thus, the expiry of Defect Liability Period of 5 years 45 days from the completion of the

project, in my opinion, does not seem to be reasonable for refund of the security deposit.

Having perused the documents, this court is of the view that the writ petition should be disposed of with a direction upon the Chief Engineer, P & RD, West Bengal State Rural Development Agency to immediately take a decision on the proposal for honourable termination of the works dated August 3, 2020 made by the Executive Engineer & Head of PIU and also consider the prayer for refund of the security deposit to the petitioner in accordance with law.

The petitioner shall serve a server copy of this order and a copy of the writ petition upon the respondent no. 2 along with a composite representation. The representation shall be disposed of within a period of four weeks from the date of receipt thereof upon giving a hearing to petitioner and/or his representatives. A reasoned order shall be passed on the proposal for termination of the work and refund of security deposit and communicated to all the parties.

With the above observations, this writ petition is disposed of. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)