

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
D A T E D : 25.02.2021  
C O R A M  
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.16977 of 2009  
and  
M.P.No.1 of 2009

M/s.Subaya Constructions Co. Ltd.,  
Rep. by its Director, Mr.E.Subaya,  
No.21, Soundarapandian Street,  
Ashok Nagar,  
Chennai-600083.

...Petitioner

Vs

1.The Chairman  
Chennai Port Trust,  
Rajaji Salai,  
Chennai - 600 001.

2.The Chief Engineer,  
Chennai Port Trust,  
Rajaji Salai, Chennai - 600 001.

3.The Superintending Engineer,  
Chennai Port Trust,  
Rajaji Salai,  
Chennai - 600 001.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the Respondents to revoke the arbitrarily and unjustly imposed Liquidated Damages of Rs.7,81,066/- and pay the same to the Petitioner and to pay the sum of Rs.20,33,252/- due on the final bills with 18% interest from 06.11.2007 till the amount is settled and to pay 18% interest on the retention amount and the Security Deposit from 04.11.2008 and to pay compensation amount of Rs.26,52,000/-, since the Petitioner has incurred an actual expenditure of Rs.1.83 Crores for the actual works executed over and above the Rs.1.56 Crores entirely due to the Departmental delays and to pay Rs.40 lakhs towards loss incurred by the Petitioner due to the wilfull restriction in the quantity of works which was originally awarded which resulted in the loss.

For Petitioner : Mr.JST. Vijay Sai

For Respondents : Mr.R.Karthikeyan

O R D E R

This writ petition is filed by a contractor whose services were engaged by the Chennai Port Trust for providing a storm water drainage arrangement at the Marshalling Yard and Coal Yards of the Chennai Port Trust. For this purpose, an agreement was entered into on 09.10.2006, which was preceded by a work order dated 22.05.2006. The work was to be executed within a period of six months, i.e. from 08.06.2006 to 07.12.2006. According to the Petitioner, the completion of work was delayed on account of the Chennai Port Trust not making available the site and/or the requisite facilities to undertake such work. This contention is refuted by the Respondents. Nonetheless, the admitted position is that extensions of time were granted and that eventually a portion of the work was completed on 05.11.2007. The Chennai Port Trust terminated the relationship, at that juncture, by foreclosing the contract although the entire work had not been completed.

2. The final bill, retention money and security deposit had not been paid or released, respectively, to the Petitioner. In addition, a sum of Rs.7,81,066/- was deducted as liquidated damages. In order to recover the aforesaid and to claim compensation, the present writ petition has been filed.

3. While the writ petition was pending, the admitted position is that the amounts claimed under the final bill, and amounts withheld towards retention money and security deposit were released to the Petitioner. The learned standing counsel for the Chennai Port Trust handed over the statement of account, in this connection, to learned counsel for the Petitioner and the said statement of account was also verified by the Petitioner.

4. Consequently, the scope of the dispute has narrowed down to the claim for refund of a sum of Rs.7,81,066/-, which was deducted by Chennai Port Trust by way of liquidated damages, and the compensation claim of Rs.26,52,000/-.

5. The learned counsel for the Petitioner referred to the letter dated 22.07.2006 and the minutes of meeting dated 05.06.2007 to contend that the delay is entirely attributable to the Chennai Port Trust. Consequently, he submits that the Chennai Port Trust granted extensions of time and that work was

completed on or before 05.11.2007, which is the extended dead line for completion of work. On that basis, he contends that the Chennai Port Trust was not entitled to levy liquidated damages.

6. This contention is refuted by Mr.Karthikeyan on behalf of the Chennai Port Trust. He submits that the contract contains a provision for the imposition of liquidated damages by the employer, in the event of delayed execution of work by the contractor, and that a sum of Rs.7,81,066/- was levied in accordance with Clause 35 of the agreement between the parties. Indeed, he submits that the contract had to be foreclosed even before completion of the full scope of work on account of the delayed execution by the contractor.

7. From the above narration, it is evident that disputed questions of fact arise with regard to the right of the Chennai Port Trust to levy liquidated damages. In other words, unless it is determined as to which party is responsible for the delayed execution of work and such responsibility is apportioned, if necessary, the dispute as regards the imposition of liquidated damages and the additional claim for compensation cannot be decided. Such determination and adjudication cannot be conveniently undertaken in proceedings under Article 226 of the Constitution, which are decided in a summary manner by affidavit evidence. Therefore, I am not inclined to exercise discretionary jurisdiction and adjudicate these disputed claims.

8. Consequently, the writ petition is disposed of by leaving it open to the Petitioner to institute appropriate civil proceedings for purposes of claiming refund of liquidated damages and/or for claiming unliquidated damages by way of compensation. If such suit is instituted by the Petitioner, it is open to the Petitioner to make a request to the court concerned to exclude the time taken in prosecuting the present writ petition for purposes of computation of the period of limitation. In such event, the Court concerned may consider extending the benefit of Section 14 of the Limitation Act 1963 to the Petitioner.

9. This writ petition is disposed of on the above terms. Consequently, connected miscellaneous petition is closed. There will be no order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Chairman  
Chennai Port Trust,  
Rajaji Salai, Chennai - 600 001.

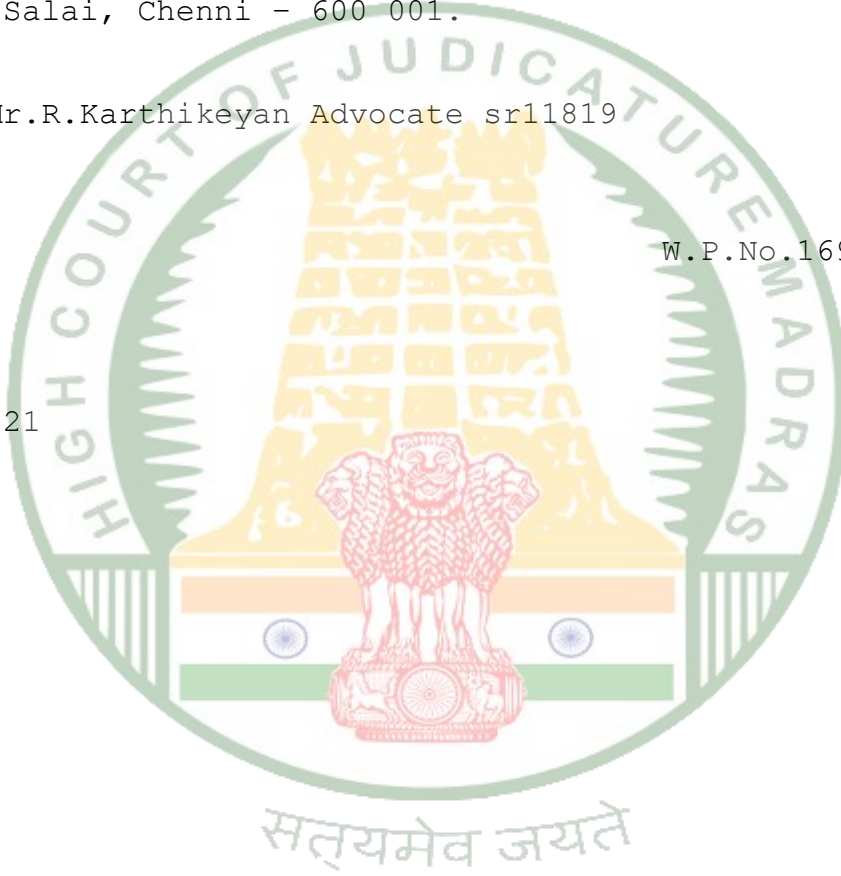
2.The Chief Engineer,  
Chennai Port Trust,  
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3.The Superintending Engineer,  
Chennai Port Trust,  
Rajaji Salai, Chennai - 600 001.

+1 cc to Mr.R.Karthikeyan Advocate sr11819

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