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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.3558 & 3559 of 2021

J.Kumaran

... Petitioner in WP.No.3558 of 2021

M/s.Sri Durga Enterprises,
Red. by its Proprietor V.Paipoorani
Residing at No.9, Rangasamy Street,
Gandhi Nagar, Keelkattalai,
Chennai - 600 117.

... Petitioner in WP.No.3559 of 2021

Vs

- 1.The Commissioner,
Pallavaram Municipality,
Chromepet, Chennai - 600 044.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Office,
Ragavendra Nagar, Tirupati Kundram Road,
Kancheepuram, Kancheepuram District.
- 3.The Inspector of Police,
Vigilance and Anti Corruption Office,
City Special Unit-III, Alandur,
Chennai - 600 016.

(RR 2 & 3 impleaded vide order dt. 28.06.2021
made in WMP.Nos.13910 & 13911 of 2021)

.. Respondents in both WPs

Prayer in WP.No.3558/2021: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to forthwith sanction and disburse the bill amount of Rs.24.90 lakhs by considering the petitioner's representation dated 24.12.2020.

Prayer in WP.No.3559/2021: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to forthwith sanction and disburse the bill amount of Rs.24.35 lakhs by considering the petitioner's representation dated 24.12.2020.



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For Petitioners : Mr.K.Raja (in both WPs)

For 1st Respondent : Mr.P.Srinivas
Standing Counsel (in both WPs)

For Respondents 2 & 3 : Mr.NRR.Arun Natarajan
Special Government Pleader
(in both WPs)

COMMON ORDER

Since the issue raised in both the writ petitions is one and the same, with the consent of the learned counsel appearing for the parties, both these writ petitions were heard together and disposed of by this common order.

2. Both the petitioners are the registered contractors, who had done some road laying work to the first respondent Municipality. According to the petitioners, the said work has been completed and therefore, they are eligible to get the bill amount payable for the work completed by the respective petitioners.

3. Therefore, the petitioners in order to get the bill amount from the first respondent Municipality have given separate representations on 24.12.2020 and the said representations since have not been considered by the first respondent Municipality, these petitioners are before this Court by filing these writ petitions respectively with the aforesaid prayer.

4. Heard Mr.K.Raja, learned counsel appearing for the petitioners, who would submit that, insofar as the completion of the work is concerned, there could be no dispute from the Municipality and based on the measurements, which have already been recorded in the measurement 'M' Book as per the rate quoted and the bills submitted by the petitioners, the amount has to be paid to the petitioners contractors and in this regard, it seems that there had been surprise check up or inspection by the Vigilance Department i.e., second and third respondents, pursuant to which, case has been registered against the officials of the respondent Municipality and some alleged ill-gotten money etc. seems to have been recovered from them and the investigation in respect of the said case still going on it seems, therefore, for the purpose of the said investigation, since the Measurement Book concerned of the respondent Municipality also had been seized and handed over to the Magistrate concerned by the Investigating Agency, the first respondent Municipality has not come forward to settle the bills payable to the petitioners. Therefore, the learned counsel for the petitioners seeks indulgence of this Court to issue a suitable direction to the Municipality to clear the bills in accordance with law within a time that may be stipulated by this Court.



5. Heard Mr.P.Srinivas, learned Standing Counsel appearing for the first respondent Municipality, who would submit that, pursuant to the surprise check conducted by the second and third respondents on 05.11.2020 and 06.11.2020, case has been registered against the erstwhile Municipality officials and the same is pending in FIR CC-II Crime No.11/AC/2020 and the investigation, according to the second and third respondents, still going on where the Measurement Book pertaining to the work undertaken by the first respondent Municipality since has been seized and in their custody, the Municipality could not proceed further, therefore, there has been a delay in considering the request of the petitioners for settling their bills against the work they have completed.

6. Only at that circumstances when the case came up for hearing on 08.11.2021, this Court given the following direction to the second and third respondents:

"Though a report dated 19.07.2021 has been filed, which has been relied upon by the learned counsel for second and third respondents that, investigation is pending against the erring officials of the first respondent Municipality, the further progress made in the said investigation after the joint surprise check conducted on 05.11.2020 and 06.11.2020 at the premises of the first respondent, has not been spelt out so far.

2. Though a direction was given in this regard on 21.09.2021 to get instructions with regard to the stage of the investigation, nothing is forthcoming so far from the second and third respondents. Hence, a direction is hereby given to the second and third respondents to file a further status report explaining the details of investigation that went on throughout for the above one year period from 05.11.2020 till date and if there is any delay in making considerable progress in the investigation, the reasons for such delay also should be explained in such report.

3. For filing such a report, post the matter on 15.11.2021."

7. Pursuant to the said order passed by this Court on 08.11.2021, when this case is taken up for hearing today, Mr.NRR.Arun Natarajan, learned Special Government Pleader appearing for second and third respondents has filed the status report of the second and third respondents, where, inter alia, the second respondent has stated the following:

"8. It is submitted that, the case was transferred and handed over to the 2nd Respondent herein on 17.02.2021 for further investigation. It is submitted that, so far 45 witnesses were examined and



5 documents were collected and the case is under investigation.

9. It is submitted that the petitioner here in is said to be registered contractor with Pallavaram Municipality and claims to have laid road as per tender issued to him and claims that bill amount of Rs.24.90 lakhs and Rs.24.35 lakhs respectively from Pallavaram Municipality was not settled. Therefore, the petitioner filed present Writ of Mandamus before this Hon'ble Court to direct the 1st respondent/Commissioner of Pallavaram Municipality to forth with sanction and disburse the above said bill amount. Meanwhile the petitioner filed the above said W.M.P.13910/2021 and W.M.P.No.13911/2021 to implead the Respondent herein by stating that the measurement book pertaining to contractual work done by petitioner was seized by this Respondent during above said Surprise Check.

10. It is submitted that, the M.F-81 Measurement Books are maintained by the Municipal Engineers of Pallavaram Municipal office and recorded the day to day work done by the contractors. The petitioner is admittedly one of the contractor in the above Municipality. The M.F-81 Measurement Book was seized during surprise check and now remains as court property. The case is under investigation stage and few witnesses are yet to be examined to verify the nexus between the contractor and the accused officer. However certified copies of M-Book is sufficient for investigation and the original M-Book may be handed over to the Commissioner, Municipal office Pallavaram.

In such circumstances, it is most humbly prayed that this Hon'ble Court may be pleased to accept this Status Report filed as per direction of this Hon'ble Court and pass such order or orders as this Hon'ble Court may deem fit and proper in the interest of Justice."

8. By relying upon the said report, the learned Special Government Pleader for second and third respondents would contend that, though 45 witnesses have been examined by the Investigating Agency, still some more witnesses have to be examined and to take some reasonable time to complete the investigation and file a charge sheet. The learned Special Government Pleader, by relying upon the averments made in para 10 of the report, as quoted herein above, would further submit that, insofar as the Measurement Book is concerned, for further investigation it is sufficient to have the certified copies of the M-Book. Therefore, the original M-Book may be handed over to the Commissioner of the Municipality i.e., the first respondent Municipality in due course.



9. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

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10. The only difficulty so far was expressed by the Municipality in considering the request of the petitioners for releasing the amount against their bill for completion of the road laying work at the Municipality is concerned, such non-availability of the M-Book as the same was admittedly seized by the second and third respondents at the time of surprise check up and had been handed over to the concerned Court.

11. Now, in this context, the second and third respondents in their report has come out that the certified copies of M-Book is sufficient for investigation and the original M-Book may be handed over to the Commissioner of the Municipality for further action at their end.

12. In view of the said stand taken by the Investigating Agency, there could be no impediment for the respondent Municipality to get back the M-Book and on receipt of the same, the Municipality can go ahead with the consideration of the request made by the respective petitioners for clearing their bills, according to the M-Book measurement recorded therein and after verifying the M-Book measurement, whatever the amount payable to the respective petitioners, this Court feels that 75% of the same can be released after getting undertaking from the respective petitioners. This arrangement is made only because of the pendency of the investigation where the investigation is yet to be completed and some more witnesses are going to be examined by the Investigating Agency where there may be a chance to rope in some of the contractors if not as an accused but as a witness and therefore, the entire clutches on these petitioners by the Municipality cannot be directed to be released by sanctioning the entire amount or due payable to these petitioners. However, at the same time, since the petitioners have completed their work in entirety as claimed by them, they should be certainly released the considerable percentage of the bill amount.

13. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the respondent Municipality is directed to get back the M-Book from the second and third respondents and in this regard, if any request is made by the Municipality, the original M-Book shall be handed over with acknowledgment forthwith.

(ii) On receipt of the M-Book original, the request of the petitioners can be considered by the respondent Municipality and accordingly, after ascertaining the due payable to them, 75% of the said due shall be released by the Municipality to



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the respective petitioners after getting written undertaking from the petitioners. The undertaking should be with effect that, in pursuance of further progress of the investigation by the Investigating Agency in case of any chance of rope in the petitioners even as a witness and for the said purpose, the respondent Municipality to have a clutch on these petitioners, to retain some portion of the bill amount is necessitated, therefore, the amount i.e., 75%, to be released in this regard, could be recoverable if any need arises. The remaining 25% amount to be withheld for the time being by the Municipality would also liable to be forfeited depending upon the situation that may arise on completion of the investigation and filing of the charge sheet by the Investigating Agency.

(iii) After getting this undertaking from the petitioners, the 75% of the bill amount for each of the petitioners shall be released by the respondent Municipality to the petitioners and the remaining 25% bill amount shall be retained. It is made clear that if ultimately the petitioners would become eligible to get 25% also, the said 25% amount would carry the minimum interest of 6% from the release of the 75% amount till the date of payment of 25% remaining amount.

(iv) The aforesaid needful shall be undertaken by the respondent Municipality with a cooperation of the second and third respondents within a period of four weeks from the date of receipt of a copy of this order.

(v) It is made clear that since the original M-Book is in the concerned Magistrate Court, necessary application to get the same by citing the present order of this Court is to be made only by the prosecution and if such application is made, the concerned Court shall immediately dispose the same and release the M-Book original to the Investigating Agency for the aforesaid purpose.

14. With these directions, both these writ petitions are disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar



Sgl

To

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- 1.The Commissioner,
Pallavaram Municipality,
Chromepet, Chennai - 600 044.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption Office,
Ragavendra Nagar, Tirupati Kundram Road,
Kancheepuram, Kancheepuram District.
- 3.The Inspector of Police,
Vigilance and Anti Corruption Office,
City Special Unit-III, Alandur,
Chennai - 600 016.
- 4.The Government Advocate,
High Court, Madras.

+1cc to Mr.P.Srinivas, Advocate SR.No.58817

+1cc to Government Pleader SR.No.59022

W.P.Nos.3558 & 3559 of 2021

MG(CO)
GMY(01/12/2021)