



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD).No.15932 of 2021

and

W.M.P. (MD) .Nos.12869 & 12871 of 2021

WEB COPY

R.Thangaiya

... Petitioner

Vs.

1.The Wild Life Warden,
Megamalai Wild Life Division,
K.R.R.Nagar,
Theni.

2.The Forest Range Officer,
Chinnamanur Range,
Chinnamanur,
Theni.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, call for the records pertaining to the impugned order in WLW SO No.87/2019-20 dated 18.08.2021 passed by the second respondent herein and quash the same as illegal and consequently direct the respondents herein to disburse the bill cost amount of Rs.4,97,613/- as per the estimate for the construction of Check Dam No.3 at Highways Section, Erasanayakanur East, Chinnamanur, Theni District, for the completion of work as per the specification in the work order forthwith to the credit of the petitioner.

For Petitioner : Mr.A.Mithun Chakravarthi
For Respondents : Mr.P.Subbaraj
Counsel for the State
for Respondents

ORDER

The petitioner challenges an order dated 18.08.2021 of the second respondent. By such order, the petitioner was informed that payments would be released to the petitioner only upon carrying out the rectification of defects in the Check Dam.



2. The petitioner is a Contractor. Upon submitting a bid in respect of the construction of Check Dam No.3 at Highways Section, Erasanayakanur East, Chinnamanur, Theni District, the petitioner was awarded a contract in relation thereto. Pursuant thereto, an agreement dated 15.01.2019 was executed and a work order was also issued to the petitioner.

3. According to the petitioner, work was completed before 31.12.2019 in accordance with the relevant specifications. However, necessary payments were not made to the petitioner by citing one reason or another. The petitioner states that the side bunk of the check dam was damaged on account of heavy rain fall and the resultant flooding. The petitioner states that he cannot be held responsible for such damage. In the said facts and circumstances, the impugned order dated 18.08.2021 is challenged by way of this writ petition.

4. Mr.P.Subbaraj, learned counsel for the State, accepts notice on behalf of both the respondents.

5. From the facts set out above, it is evident that the dispute pertains to a construction contract. While the petitioner contends that the entire scope of work under such contract was duly performed and that, therefore, the petitioner is entitled to payments in terms of the contract, the respondents refute such statement. According to the respondents, the petitioner is liable to rectify the defects in the construction, including defects caused by rain fall. A dispute of this nature is required to be adjudicated by referring to the relevant terms of the contract and after the contesting parties adduce evidence with regard to the disputed questions of fact.

6. The admitted position is that the relevant contract contains an arbitration clause. Therefore, the petitioner should invoke such arbitration clause and canvass his grievance before the duly constituted arbitral tribunal. In such regard, it may be noted that the petitioner is entitled to seek interim relief from a jurisdictional court under Section 9 of the Arbitration and Conciliation Act 1996, even before such arbitral tribunal is constituted. In addition, the petitioner may seek interim relief from the arbitral tribunal under Section 17 thereof. Therefore, the petitioner is not entitled to relief in exercise of extraordinary jurisdiction under Article 226 of the Constitution.

7. For reasons set out above, W.P.(MD).No.15932 of 2021 is dismissed without any order as to costs. However, it is open to the petitioner to initiate arbitral proceedings in accordance with the contract with the respondents and seek remedies therein.



Consequently, connected W.M.P.(MD).Nos.12869 & 12871 of 2021 are closed.

Sd/-

Assistant Registrar (CS II)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sbn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Wild Life Warden,
Megamalai Wild Life Division,
K.R.R.Nagar,
Theni.

2.The Forest Range Officer,
Chinnamanur Range,
Chinnamanur,
Theni.

+1 CC to M/s.SPL GP (SR-28508[F] dated 08/09/2021)

W.P (MD) .No.15932 of 2021
07.09.2021

MMS (CO)
SB(16.09.2021) 3P 4C