



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD)No.18227 of 2021

and

W.M.P. (MD)Nos.15061 to 15064 of 2021

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M/s.Subaya Constructions Company Limited,
represented by its Director,
S.Chandra Gandhimathi,
Chennai - 600 083.

... Petitioner

vs.

1.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Sewerage Division,
No.23, Kannadhasan Manimandapam Back Side,
T.T.Nagar, Karaikudi - 630 003.

2.The Chief Engineer,
Tamil Nadu Water Supply and Drainage Board,
No.1/1, Sambakulam, Ganesh Nagar,
Opp.Mattuthavani Bus Stand,
Melur Road, Madurai - 625 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari Mandamus, to call for the records of the respondent No.1 in Letter dated 16.09.2021 bearing No.16921/F.Karaikudi - UGSS/JDO/Sew/KKDI/2021, and quash the same and consequently, to direct the respondents not to take/initiate any coercive steps and make prompt payments to the petitioner in terms of the contract and further allow the petitioner to complete the works without any hindrances or delay and co-operate with the completion of works.

For Petitioner : Mr.P.J.Rishikesh

For Respondents : Mr.S.Sankar

for Mr.B.Vijaya Karthikeyan
Standing Counsel

O R D E R

The petitioner had entered into an agreement with the respondent/Tamil Nadu Water Supply and Drainage Board on 05.01.2016, a copy of which had been filed along with the Writ Petition.

<https://hcservices.courts.gov.in/hcservices/> 2.11.21 the affidavit filed in support of this Writ Petition, it



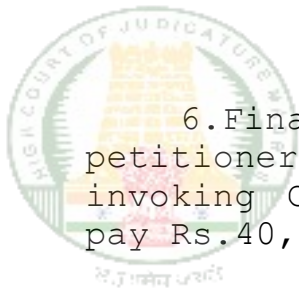
had been stated that the petitioner had been awarded with a work of "Underground Sewerage Scheme to Karaikudi Municipality" in Sivagangai District. As stated, the agreement was dated 25.01.2016. The contractual period of completion was 24.07.2018. We are now in 18.11.2021, three years later.

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3.It is claimed by the petitioner that he was allowed to commence the work only on 15.05.2017. That is an issue on fact, which has to be decided only on the basis of materials, which have to be presented by the petitioner and also accepted by the respondents. In the affidavit, the petitioner had given further details that he had been asked to stop the work owing to an order of status-quo granted by National Green Tribunal, Chennai. It has been stated that only thereafter the work commenced. Again, this is an issue on fact, which has to be examined.

4.It had also been stated that the respondents could not get consent to establish for STP and Pumping Station and they obtained the consent only on 29.06.2018. This, again, is a statement on fact, which has to be examined only on the basis of materials and documents. It had also been stated that for all these reasons, the work could not be completed before 05.01.2021. The petitioner has also complained that the respondents delayed the contract by belatedly obtaining the structural design for STP and other structural designs for various components. Again, the petitioner had made averments regarding statements on facts, which can be decided only on materials and certainly, the averments in the affidavit cannot be taken on their face value. It was again stated that there was one portion of the work, which was to be executed on the road belonging to the Highways Department and the respondents could not obtain various approvals from the Highways Department. Once again, these are issues, which can never be examined by the Writ Court.

5.It had been finally stated that there was a delay in completion of the work and extension of time was sought. As a matter of fact, the entire work has not been completed in entirety, even on the date of issuance of the impugned notice, dated 16.09.2021. The respondents have issued a show cause notice on 01.12.2020. The petitioner had responded vide letter, dated 13.01.2021. But, in the impugned letter was issued on 16.09.2021, a tabular column had been given, wherein, the respondents have given the details about the work allotted, work done and the balance of work to be done. The balance of work to be done is certainly an issue, which has to be tested on the basis of materials further provided by both the parties. Evidence will necessarily have to be let in by the parties and appreciated by a competent authority.



6.Finally, in the impugned notice, owing to the fact that the petitioner had not completed the work, the respondents had, invoking Clause-40 of the agreement, directed the petitioner to pay Rs.40,000/- per week till the completion of the work.

7.The learned Counsel for the petitioner states that this claim is extremely unreasonable, particularly, because, there are amount payable by the respondents and the learned Counsel for the petitioner states that they are admitted payments. The petitioner may consider the same as admitted payments, but, it all depends on how the respondents view it. If there is contest, then again the parties will have to produce documents and evidence to show the nature of work entrusted, show the nature of work completed and show the payment of each work and show the outstanding for each work. Again, these are issues, which can never be determined in the Writ Court.

8.In the agreement, there is also a clause for settlement of disputes and it is seen that there is a Dispute Redressal Committee, which is headed by various officials and the details have been given in the agreement itself. Once there is a particular method, which had been agreed by the petitioner and the respondents, as an appropriate method to settle any disputes, it is prudent that they go before that particular Committee seeking resolution. The sanctity of signing the contract must be upheld by both the petitioner and the respondents.

9.A Writ Court can never examine issues on fact. It has also been provided in the agreement under the very same clause that in the event of any issue, then the same shall be settled by a competent Court having jurisdiction. Naturally, it would indicate that the parties have taken a conscious decision to examine statements made by each other to be tested during the course of trial. The documents produced should also be tested. They must be admissible, relevant and proved in manner known to. All these cannot be done by a Writ Court and it would prudent that this Court does enter into such an exercise. I would, therefore, revert the petitioner back to the Dispute Redressal Committee.

10.It is complained by the learned Counsel for the petitioner that though the petitioner had made several representations for formation of Dispute Redressal Committee, the respondents have not come forward to form such a Committee. A direction is given to the respondents to form Dispute Redressal Committee in accordance with the agreement entered into between the petitioner and the respondents within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner and the respondents are relegated to the said Committee.



11.The demand for Rs.40,000/- may also be placed before the said Committee and the said Committee may examine the correctness of such demand, the manner in which the amount of Rs.40,000/- per week was arrived at and whether the petitioner should be inflicted such costs of Rs.40,000/- per week. The petitioner may also place before the Committee their claim as against the respondents.

12.Therefore, the impugned order is interfered to that limited extent, however, maintaining the charge of the respondents with respect to the uncompleted work, which the petitioner has to satisfy that they had actually completed. But, the claim for Rs.40,000/- is interfered with and that is an issue, which has to be examined only by the Dispute Redressal Committee. The Writ Court is not the proper forum to examine the issues raised.

13.For all these reasons, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar(CS)

Cmr

To

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+1 CC to M/s.B. VIJAY KARTHIKEYAN, Advocate (SR-35264[F] dated 19/11/2021)

+1 CC to M/s.A. SIVAJI, Advocate (SR-35041[F] dated 18/11/2021)

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