

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-4943-2020 (O&M)
Date of Order:15.02.2021

THE NARWANA RAJENDRA COOP. L & C SOCIETY
THROUGH ITS PRESIDENT

..Petitioner

Versus

STATE OF HARYANA AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Rajesh Sethi, Advocate,
for the petitioner.

Mr. Amit Aggarwal, DAG, Haryana.

Mr. Jitender Nagpal, Advocate
for respondent no.4 to 6.

ANIL KSHETARPAL, J(Oral)

The hearing of the case was held through video conferencing
on account of restricted functioning of the Courts.

The question which arises for determination is “whether it
would be appropriate to start entertaining writ petitions for recovery of the
disputed amount, at the behest of civil contractors, from the State or its
instrumentalities?

Through this writ petition, the petitioner has invoked the extra
ordinary writ jurisdiction of this Court, seeking the following substantive
reliefs:-

“Issue a writ of certiorari quashing the decision

dated 27.2.2017 (P-20) conveyed vide letter bearing sr.no 364 by the Executive Officer, M.C., Narwana (respondent no 5) as per which the demand of the petitioner society for the revised work has been declined on the ground that neither any revised work order was issued nor any administrative approval thereto was accorded by the Deputy Commissioner Sirsa;

(ii) Issue a writ in the nature of mandamus directing the Respondents to release the balance payments of the duly completed work relating to construction of street by providing CC paver blocks from Sir Chhotu Ram Park to Escort Agency in Ward No 17 (Part I) as extended further vide resolution no 162 7.5.2015 (Annexure P4) extending the work from Rs. 5 lacs to 19 lacs; the completion of which was inspected, checked, verified and evaluated vide MB No. 216 (Annexure P5) (at its pages 6, 19, 20 and 21 and a final bill of Rs 18,61,965/- (Annexure P6) was prepared out of which a sum of Rs. 7,28,315/- has been paid after deducting sales tax of Rs. 46207/-; TDS 8801/-, labour cess 8801/- and security @ 10% i.e Rs 88013/- and thus a sum of Rs. 10,69,841/- is still payable by MC Narwana to petitioner society in respect of Part-I; and also in respect of construction of street by providing CC paver blocks from Sir Chhotu Ram Park to Escort Agency in Ward No.17 (Part II) as extended further vide resolution no. 163 dated 7.5.2015 (Annexure P4) extending the work from Rs.5 lacs to 19 lacs; of work done by the petitioner vide work order no.51 dated 27.3.2015 (Annexure P-1) and also the work order no.52 dated 27.3.2015 (annexure P-2); the completion of which was inspected, checked, verified and evaluated by Junior Engineer and Municipal Engineer in the MB to the tune of Rs.1905070/- recommending for payment of Rs.19.00 lacs for payment as per MB No.216 (Annexure P-5) after deducting 10% security amount 1,90,000/-; sales tax 99750/-; 1% income tax 19000/-; 1% labour cess 19000/-; and thus a sum of rs.15,72,250/- as per final bill (annexure P-7) is still being withheld and withholding the aforesaid amount of the completed works as per aforesaid job orders/extended job orders is arbitrary, wrong and incorrect, misuse of powers and monopolistic and thus the respondents are bound to pay the aforesaid amount with interest and costs etc.”

As noticed from the prayer clause, the petitioner seeks the quashing of an order passed by the Executive Officer, Municipal Council, Narwana on 27.02.2017.

In substance, the petitioner is a contractor, who was allotted 2

different civil works for laying paver blocks in the year 2015. It is the case of the petitioner that when he was executing the work as originally allotted, he was given revised orders and the scope of his work was enhanced/increased. The petitioner claims that although, he has successfully completed the work, however, complete payment thereof has not been released. It is an admitted fact that some part of the payment has been released. Pursuant to the directions in Civil Writ Petition No.24418 of 2016, filed by the petitioner herein, the Executive Officer, Municipal Council, Narwana, has passed a detailed order on 27.02.2017. On careful reading of the order, it is apparent that the Municipal Council, Narwana, has taken a stand that no revised work order has been issued by it. Still further, the order in question was passed on 27.02.2017. This writ petition has been filed after a period of approximately 3 years i.e. on 20.02.2020.

Further, from the documents available, it is not possible to conclude that the payment, as sought for, is admitted by the respondents.

Learned counsel for the petitioner submits that the High Court while exercising its extra-ordinary writ jurisdiction can issue a writ involving consequential relief of monetary claim.

This Court has carefully considered the arguments of learned counsel for the petitioner.

It may be noted here that the counsels appearing for the State as well as the Municipal Council, Narwana, have disputed the claim made in the writ petition. No doubt, no written statement has been filed, however, this Court, with the consent of the learned counsel for the parties has heard the arguments at length.

Learned counsel for the petitioner relies upon the following

judgments in support of his submissions:-**Popatrao Vyankatrao Patil vs. The State of Maharashtra and others**, (Civil Appeal No.1600 of 2020, decided on 14.02.2020)(SC), **Urban Improvement Trust, Bikaner vs. Mohan Lal**, (2010) 1 SCC 512, **ABL International Ltd & Anr. vs. Export Credit Guarantee Corporation of India Ltd. and Ors**, (2004) 3 SCC 553, **Smt. Gunwant Kaur & Others vs. Municipal Committee, Bathinda & Others**, (1969) 3 SCC 769 and **Hari Krishna Mandir Trust vs. State of Maharashtra**, (Civil Appeal No.6156 of 2013, decided on 07.08.2020).

In **Popatrao Vyankatrao Patil's** case, Hon'ble Supreme court ordered refund of the amount deposited by a contractor as the State was not in a position to deliver the possession of block of land for mining the sand. The authorities as a matter of fact had found that the possession could not be delivered to the contractor. Hence, the aforesaid judgment with greatest respect has no applicability in the present case.

The second judgment relied upon by learned counsel for the petitioner is in **Urban Improvement Trust, Bikaner (supra)**. In the aforesaid case, the petitioner had allotted a plot to the respondent on receipt of the allotment price. Thereafter, adjacent strip of land was also allotted. Subsequently, the trust laid a road in the said plot. The allottee went to the District Consumer Forum and only refund of the allotment price with interest was ordered. The State Commission allowed the appeal and directed allotment of an alternative plot. The revision petition filed by the trust was dismissed by the National Commission. The Supreme Court dismissed the Special Leave Petition. Hence, this judgment is also not applicable.

Next judgment relied upon by learned counsel for the petitioner

is in *ABL International Ltd & Anr.*(supra). In the aforesaid case, there was a contract for Credit Guarantee by Export Credit Guarantee Corporation of India Limited in favour of the exporter. However, when the exporter made a claim, the same was repudiated by the Corporation. In the facts of the case, the court held that in all cases, the court is not bound to relegate the parties to a civil suit. It was held that in appropriate cases, the writ Court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation or involves some disputed questions of fact. The Supreme Court in paragraph 28 and 29 summed up its conclusion, which are extracted as under:-

“28.From the above discussion of ours, following legal principles emerge as to the maintainability of a writ petition:-

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) a writ petition involving a consequential relief of monetary claim is also maintainable.

*29. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case has discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power [see: **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors.. [1998 (8) SCC 1]**]. And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for*

other valid and legitimate reasons, for which the court thinks it necessary to exercise the said jurisdiction.”

It is apparent that this judgment also does not apply.

Next judgment relied upon by learned counsel for the petitioner is in the case of ***Smt. Gunwant Kaur & Others(supra)***. In the aforesaid case, the State of Punjab had acquired certain piece of land for widening the road. The writ petition was filed in the High Court claiming that the detail of the land acquired has not been notified and therefore, the acquisition is not legal. The High Court dismissed the writ petition on the ground that disputed questions of fact are involved. The Hon'ble Supreme Court held that in such case, dismissal of the writ petition in limine was wrong. It is apparent that this judgment is also not relevant for the decision of the case.

Last judgment relied upon by learned counsel for the petitioner is in ***Hari Krishna Mandir Trust (supra)***. In the aforesaid case, the trust had challenged an order dated 03.05.2006 passed by the State Government refusing to sanction the modification of scheme under the provisions of Section 91 of the Maharashtra Regional and Town Planning Act, 1966. The Hon'ble Supreme Court after noticing the facts of the case, in detail, held that the High Court committed an error in refusing to go into the question deeply. Hence, this judgment also does not come to the rescue of the petitioner.

Keeping in view the aforesaid facts, this court is of the considered view that it would not be appropriate for this court to exercise its jurisdiction to issue prerogative writ under Article 226 of the Constitution of India, particularly, when the petitioner has an effective alternative remedy which would be more appropriate remedy in the facts of the case.

Hence, the petitioner is relegated to the alternative remedy.

The writ petition stands disposed of accordingly.

February 15, 2021
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No