

**LPA-643-2021**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**112**

**(PROCEEDINGS THROUGH V.C.)**

**LPA-643-2021**

**DATE OF DECISION: AUGUST 02, 2021**

**The Narwana Rajendra Coop. L & C Society Ltd., Narwana, District Jind**

**.....Appellant**

**VERSUS**

**State of Haryana and others**

**....Respondents**

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH  
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA**

**Present: Mr. Rajesh Sethi, Advocate,  
for the appellant.**

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**AUGUSTINE GEORGE MASIH, J. (ORAL)**

Challenge in this appeal is to the order/judgment dated 15.02.2021 passed by the learned Single Judge, whereby the writ petition preferred by the appellant has been disposed of by observing that it would not be appropriate for the writ Court to exercise its prerogative under Article 226 of the Constitution of India, when an effective alternative remedy, in the facts of the case, was available and accordingly the appellant was relegated to avail of the same.

2. Learned counsel for the appellant, on the basis of the facts of the case, submitted that the appellant-Society, in pursuance of a public advertisement issued by the Municipal Council, Narwana, applied through tenders for construction of street by providing CC paver blocks of Part-I and

Part II. These were two different works, which were allotted to the appellant by the Municipal Council, Narwana, vide work order Nos.51 and 52 dated 27.03.2015 (Annexures P-1 and P-2) amounting to ₹4.43 lacs and ₹4.63 lacs respectively.

On the basis of various representations received, including representation dated 01.12.2016 of the Councillor of Ward No.17, Narwana, the Municipal Council, Narwana, passed two separate resolutions i.e. resolution Nos.162 and 163 in its meeting, vide which the work was extended and estimate was given as ₹5 lacs to ₹19 lacs for each of the two works. In pursuance of the said resolutions, the appellant-Society executed and completed the work of paver blocks in Part I as well as Part II under the supervision of the Junior Engineer and the Municipal Engineer of the Municipal Corporation, Narwana. After the verification of the measurement by the Junior Engineer, appellant submitted its final bills amounting to ₹18,61,965/- and ₹19,05,070/- and recommendations were made by the Junior Engineer of Municipal Council, Narwana. On 30.11.2015, the Secretary of the Municipal Council, Narwana, wrote a letter to the Sub Divisional Officer (C), Narwana, for seeking administrative approval from the Deputy Commissioner, Jind, as the valuation of the said works was more than ₹10 lacs and the competence for the same was with the Deputy Commissioner as per the instructions/letters of the Government of Haryana.

Certain objections were raised by the office of the Deputy Commissioner, Jind, which were responded to by the Municipal Council, Narwana, vide letters dated 16.12.2015 and 11.03.2016. However, when no response was received, the appellant-Society was constrained to serve a legal notice dated 06.09.2016 (Annexure P-11). Thereafter Civil Writ

Petition No.24418 of 2016 (The Narwana Rajendra Coop. L & C) Society through its President Vs. State of Haryana and others) was filed by the appellant, which was disposed of by this court vide order dated 28.11.2016 (Annexure P-12), directing the competent authority to consider the said legal notice and take a decision thereon in accordance with law within a period of two months from the date of receipt of copy of the order.

This led to passing of order dated 27.02.2017 (Annexure P-20) by the Executive Officer, Municipal Council, Narwana, wherein it was stated that the claim of the appellant beyond the initial work allotted to it could not be accepted for the reason that no revised work order had been issued by the Municipal Council, Narwana, authorizing the appellant to carry out the extended work and further no administrative approval has been accorded by the Deputy Commissioner, Jind, who is the competent authority as per the orders/instructions of the Government of Haryana.

This order dated 27.02.2017 (Annexure P-20) has been challenged by the appellant in the writ petition preferred by it before the learned Single Judge, leading to passing of the impugned order dated 15.02.2021.

3. Learned counsel for the appellant asserts that the impugned order/judgment passed by the learned Single Judge, refraining from exercising the writ jurisdiction, is not sustainable in the light of the law which has been laid down by the Hon'ble Supreme Court in various judgments, which were relied upon by him before the Court, where the Hon'ble Supreme Court had clearly held that a writ petition against the State or an instrumentality of the State arising out of an contractual obligation is maintainable and merely because some disputed questions of facts arise for

consideration, cannot be a ground to refuse to entertain the writ petition. The Hon'ble Supreme Court has further gone to hold that a writ involving a consequential relief of monetary claim is also maintainable and, therefore, the impugned judgment/order passed by the learned Single Judge is not sustainable and deserves to be set-aside and the case remanded to the Single Judge for decision on merits.

4. We have considered the submissions made by learned counsel for the appellant and with his assistance have gone through the impugned judgment passed by the learned Single Judge as well as records of the writ petition but do not find any illegality in the same.

5. During the course of hearing, learned counsel for the appellant has not been able to show us any document, which would, in any manner, substantiate his contention that the work had been allotted to the appellant by a competent authority as there is no work order placed on record with regard to extended work nor has the appellant, on the basis of the documentary evidence, been able to establish any sanction/approval of the competent authority relatable to the revised/extended work.

There are many disputed questions of facts, which are involved in the present case, including the factum of inspection, checking and verification as per the specifications and evaluation of the works carried out by the appellant as mentioned in the claim, including the entries in the measurement book. This, we state, in the light of the factual aspects pointed out in the impugned order dated 27.02.2017 (Annexure P-20), where it was mentioned that vide notice/letter dated 03.01.2017 issued by the Executive Officer, Municipal Council, Narwana, appellant was called upon to inform the names of the Junior Engineer as well as the Municipal Engineer under

whose supervision the work was executed by the appellant-Society for construction of street as also the name of the officer by whom the work order(s) was/were issued, to which no reply was furnished by the appellant. This leads us to conclude that even the measurement books, which have been referred to and relied upon by the appellant for putting forth its claim for having carried out the alleged revised work has been disputed even by the Municipal Council, Narwana.

Counsel for the appellant has also not been able to establish or place on record any document/instructions/order, which would go to show that the approval/sanction of the Deputy Commissioner was not required for the allocation of work beyond the amount of ₹10 lacs.

6. Although it may not be appropriate to comment upon the manner in which an effort has been made by the appellant to claim the amounts for the works, which the appellant-Society alleged have been carried out by it but suffice it to say that the works which were allotted for amounts of ₹4.43 lacs and ₹4.63 lacs have been sought to be extended without the approval of the competent authority for amounts which would be anywhere between ₹5 lacs to ₹19 lacs and actually swelled to ₹18,61,965/- and ₹19,05,070/- respectively, as claimed by the appellant for each of the two works. All these aspects also need to be explained by the appellant and, therefore, the order passed by the learned Single Judge, relegating the appellant to avail of the alternative remedy, cannot be said to be erroneous or non-exercise of the writ powers conferred upon the Court under Article 226 of the Constitution of India.

7. No doubt the law, as settled by Hon'ble the Supreme Court is clear that there is no blanket bar upon the powers and jurisdiction of the

High Court under Article 226 of the Constitution of India to entertain the writ petition where there are disputed questions of facts arise for consideration nor there is a bar with regard to entertainment of the writ petition arising out of a contractual obligation against a State or an instrumentality of the State as also the consequential relief for monetary claims. However, in the given facts and circumstances of a case, the Court may refuse to exercise such power, as the discretion to entertain or not to entertain the writ petition would always vest with the Court.

8. In the light of the above and in the facts and circumstances of the present case, the learned Single Judge has rightly come to a conclusion that it would not be appropriate for the Court to exercise its prerogative writ and the Court has rightly relegated the appellant to an effective appropriate alternative remedy vide the impugned order, which, cannot be said to be an illegal one or without any basis.

9. The appeal, being devoid of merit, stands dismissed.

**( AUGUSTINE GEORGE MASIH )  
JUDGE**

**August 02, 2021  
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**( ASHOK KUMAR VERMA )  
JUDGE**

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|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether Reportable:        | Yes/No |