

ORDER

OD-5

APOT/176/2022
WPO/2335/2022
IA NO.GA/1/2022
GA/2/2022

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

PEARL CORPORATION
VERSUS
WBPHIDCL & ORS.

BEFORE:
THE HON'BLE CHIEF JUSTICE PRAKASH SHRIVASTAVA
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
DATE : 11TH NOVEMBER, 2022

APPEARANCE:

Mr. Tapas Dutta, Advocate
.....for the appellant

Mr. Sayan Sinha, Advocate
Mr. Adil Nasir, Advocate
Steven S. Biswas, Advocate
... for the respondents 1, 2 & 3

Mr. Debasish Ghosh, Advocate
Mr. Sayan Ganguly, Advocate
....for the State

The Court:- By this intra-Court appeal, the writ petitioner has challenged the order of the learned Single Judge dated 23rd August, 2022 whereby GA/3/2022 for interim stay has been rejected.

The appellant had approached the writ Court with the plea that it was awarded the contract for renovation and up-gradation of Headquarters of Traffic Guard of Kolkata Police at Brabourne Road, Kolkata and that the initial period for completion of the work was 365 days. The work could not be completed. Therefore, twice extension was granted and as per the last extension, the work was to be completed by 2nd June, 2022. According to the appellant, there was delay on the part of the respondents in handing over the site and clearing the bills, therefore, the work could not be completed. Meanwhile, the contract was terminated vide communication dated 29th

March, 2022. Hence, the appellant had made a prayer in the writ petition to set aside the termination notice dated 29th March, 2022 and also sought a direction on the respondents to make payment of the bill dated 31st March, 2022. In the pending writ petition, GA/3/2022 was filed seeking stay of the work order dated 24th June, 2022 which was issued in favour of the third party. The stay application was rejected by the impugned order.

The submission of the learned counsel for the appellant is that the contract contains the penalty clause but the said clause was not invoked before termination of the contract. It also provides for compensation for delay that was also not invoked and the contract has been terminated before expiry of the extended period and that the bills were not paid. Therefore, the contract could not have been terminated. He submits that there was a delay in handing over the site, therefore, the work could not be completed and in this background he has submitted that the learned Single Judge has committed an error in rejecting the prayer for grant of stay.

The learned counsel appearing for the respondents has opposed the appeal and supported the impugned order passed by the learned Single Judge and has submitted that the nature of work was relating to public service and serious lapses were committed by the appellant and that the bills were cleared as per the tender conditions and there was no delay on the part of the respondents in handing over the site as the work was relating to renovation and for that purpose the sites were to be handed over in phased manner. He has further submitted that contract provides for termination and the termination clause has rightly been invoked and the appellant had belatedly approached the Court.

We have heard learned counsel for the parties. Perusal of the order passed by the learned Single Judge reveals that all the relevant aspects have duly been considered by the learned Single Judge. Record reflects that the appellant had initially made a prayer in the writ petition itself for interim relief and originally the said prayer was considered by the learned Single Judge and

by order dated 13th July, 2022, limited protection was extended by directing that the action taken by the respondents shall abide by the result of the proceedings. The prayer for grant of interim order restraining the termination of the contract was not granted. This order was not challenged any further.

It has been pointed out by the learned counsel for the respondents that the contract was terminated on 29th March, 2022. Thereafter the work order to the third party was issued on 24th June, 2022 but the writ petition was filed by the appellant sometime on 8th July, 2022 much after the termination of the contract and issuance of fresh work order to the third party. When the matter for grant of interim relief was heard earlier by the Single Bench on 13th July, 2022 at that time the work order to the third party was already issued. Hence, considering all the circumstances, limited protection was extended to the appellant by order dated 13th July, 2022. Hence, there was no occasion to file a fresh application being GA/3/2022 seeking stay of the work order. That apart the order of the learned Single Judge reflects that though the appellant was contending that the work to the extent of 88% was completed whereas the stand of the respondents is that the appellant had completed the work to the extent of 27.3%. This being a disputed question, the stand of the appellant in respect of the completion of work could not be accepted. The counsel for the appellant has also pointed out the relevant clause of the contract permitting termination of the contract. Hence, the stand of the appellant that no such clause exists has rightly been rejected by the learned Single Judge. That apart it is also noticed that the work relating to the public utility service is required to be completed at the earliest. Therefore, the learned Single Judge has rightly refused the prayer for stay of the work order by observing that the nature of the work concern is an infrastructural project of public importance and directly connected to the law and order situation. Thus, valid reasons have been assigned by the learned Single Judge for rejecting the prayer for stay.

Learned Counsel for the appellant has placed reliance upon the judgment of the Supreme Court in the matters of *Madhya Pradesh Power Management Company Limited vs. Renew Clean Energy Private Limited And Another* reported in (2018) 6 SCC 157 and *N. G. Projects Limited v. Vinod Kumar Jain And Others* reported in (2022) 6 SCC 127. But both these judgments have been considered in detailed by the learned Single Judge have not been found to be applicable in the facts of the present case. In fact, in the matter of N.G. Projects Limited (Supra), the Hon'ble Supreme Court has gone to the extent observing that if court finds that there is total arbitrariness or that the tender has been granted in a mala fide manner, still the Court should refrain from interfering in the grant of tender but instead relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract.

The view taken by the learned Single Judge is in consonance with the observation made by the Hon'ble Supreme Court. In the aforesaid circumstances of the case, we find no good ground to interfere the order of the learned Single Judge.

At this stage, it has been pointed out that pleadings are complete in the writ petition and the writ petition is already appearing in the list of learned Single Judge. Hence, we expect that the learned Single Judge will take up the writ petition and decide the same as expeditiously as possible.

The appeal is, accordingly, disposed of. All the pending applications are, accordingly, dismissed.

(PRAKASH SHRIVASTAVA, C.J.)

(RAJARSHI BHARADWAJ, J.)