



W.P.No.5412 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2022

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

W.P.No.5412 of 2019

M.Sampath Kumar

... Petitioner

Vs

1.The Secretary to Government,
Government of Tamil Nadu,
Highways Department,
Fort St.George, Chennai – 600 009.

2.The Superintendent Engineer,
Chennai Circle,
Highways Department (Construction & Maintenance),
Anna Salai, Teynampet,
Chennai – 600 006.

3.The Divisional Engineer,
Chengalpet Division,
Highways Department,
No.2, Periyar Nagar,
Chengalpet.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to second respondent letter bearing Ref.No.2463/2016/V4 dated 08.10.2018 and quash the same as illegal



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and arbitrary, consequently direct the 2nd respondent to repay the security deposit amount of Rs.10,36,000/- (Rupees Ten Lakhs Thirty Six Thousand only) along with 24% interest.

For Petitioner : Mr.T.Fenn Walter Associates for
Mr.K.V.Dhanapalan

For Respondents : Mr.S.Bala Murugan
Government Advocate

ORDER

The petitioner has challenged the order dated 08.10.2018 of the second respondent. By the impugned order, the second respondent has rejected the request of the petitioner for refund of the deposits made by the petitioner at the time of entering into contract with the Highways Department.

2.It is the specific case of the petitioner is that though the contract was awarded to the petitioner's site and the site was handed over to the petitioner and the contract was illegally sought to be determined by the respondents. Under these circumstances, the petitioner had filed a suit in O.S.Nos.89 & 90 of 2010 before the learned District Munsif,



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Chengalpet. It is the further case of the petitioner that the suit was decreed as prayed for declaring the cancellation notice dated 11.03.2008 and the alleged notice of distraint proceedings dated 30.07.2009 as illegal.

3.It is the further case of the petitioner is that the unsuccessful respondents challenged the same before the Additional Sub Court, Chengalpet in Appeal Nos.10 and 11 of 2013 which were dismissed on 11.02.2016. Thereafter, the petitioner had sent a representation dated 11.04.2018 to the respondents to refund the security deposit furnished by the petitioner.

4.It is the further case of the petitioner that despite the same, no steps were taken and therefore the petitioner had constrained to file the writ petition in W.P.No.15240 of 2014. It is submitted that the writ petition was also disposed by an order dated 25.06.2018. The second respondent has now passed the impugned order purportedly in compliance of the order of this Court dated 25.06.2018.



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5.The learned counsel for the petitioner submits that the conclusion in the impugned order is incorrect as the total amount of deposit made by the petitioner amounts to Rs.10,16,310/-. The impugned order is defended by the third respondent by stating that a further appeal has been preferred in S.A.Sr.No.85418 of 2016. It is further submitted that the site was indeed handed over to the petitioner in time. It is submitted that the petitioner failed to execute a contract, as a result of which the Highways Department was forced to incur a loss of Rs.58,89,392/- and therefore deducted a sum of Rs.6,76,310/- and that the petitioner was still required to pay a sum of Rs.52,13,082/-. He would submit that the respondents are entitled to appropriate the deposits of a contractor if later was unable to complete the work in time.

6.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

7.The respondents cannot refuse to refund the amount offered by the petitioner towards security deposit in the light of the judgment and decree of the Trial court in O.S.Nos.89 and 90 of 2010 both dated



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11.09.2012 as it has been confirmed by the 1st Appellate Court in A.S.Nos.10 and 11 of 2013 vide judgment and decree dated 11.02.2016. The respondents have also not seriously contested the decision of the 1st Appellate court against the judgment and decree dated 11.02.2016 in as much as only a Appeal has been filed in S.A.Sr.No.85418 of 2016, as it is evident from reading the para 10 of the counter filed by the second respondent. It appears that the appeal has not been numbered. Therefore, there is no merits in the impugned order passed by the second respondent rejecting the claim of the petitioner, to refund the security deposit offered by the petitioner.

8.Under these circumstances, the impugned order passed by the second respondent is quashed with a consequential direction to refund for a sum of Rs.10,16,310/-. There is a mistake in the impugned order stating that petitioner has offered the security for a sum of Rs.6,76,310/- only. The respondents are directed to refund the amount paid by the petitioner to the petitioner within a period of six weeks from the date of receipt of a copy of this order without prejudice to their right in the proposed appeal.



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9.This writ petition stands disposed of with the above observations. No costs.

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Index : Yes/No
Speaking/Non-Speaking Order
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To

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C.SARAVANAN, J.

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