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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.17273 OF 2014

AND

M.P.NO.2 OF 2014

N.V.Baabu

... Petitioner

.Vs.

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.
2. The Divisional Engineer (Highways),
NABARD and Rural Roads,
Chengalpet.
3. The Corporation of Chennai,
Rep. by its Commissioner,
Ripon Buildings, Park Town,
Chennai - 600 003.
4. The Assistant Commissioner,
Zone XII, Corporation of Chennai,
Alandur, Chennai - 600 016.

... Respondents

PRAYER:-

The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent herein in letter bearing Ref. No.1918/2023/A1, dated 15.05.2014 and letter bearing Ref.No.Na.Ka.No.E1/2454/2014, dated 20.06.2014 of the Fourth Respondent herein and quash the same and consequently forbear the Respondents herein, their men, agents, servant, subordinates or any other person or persons claiming through them or authorized by them from in any manner, effecting any recovery from and out of the monies receivable by the petitioner for the works carried out by him for Corporation of Chennai.



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For Petitioner : M/s.AL.Ganthimathi

For Respondent : M/s.Tippu Sultan
Nos.1 & 2 Government Advocate

O R D E R

The Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent herein in letter bearing Ref. No.1918/2023/A1, dated 15.05.2014 and letter bearing Ref.No.Na.Ka.No.E1/2454/2014, dated 20.06.2014 of the fourth respondent herein, their men, agents, servant, subordinates or any other person or persons claiming through them or authorized by them from in any manner, effecting any recovery from and out of the monies receivable by the petitioner for the works carried out by him for Corporation of Chennai.

2. The respondents seek to recover a sum of Rs.59,08,518/- under the Tamil Nadu Revenue Recovery Act from the petitioner towards loss caused to them in respect of contract terminated against the petitioner.

3. According to the petitioner, the contract was issued to the petitioner for constructing a bridge. Since the petitioner delayed the execution, it was cancelled and allotted to some other contractors, which incurred an additional expenses to the tune of Rs.59,08,518/-, which sought to be recovered from the works done by the petitioner in other on going contracts. This order of recovery under Revenue Recovery Act is not a first time. The respondents have attempted to do it on two earlier occasions. The action of the respondents was struck down by this Court in W.P.No.13298 of 2009 and M.P.No.1 of 2009, dated 15.07.2009. The relevant portion of the order is extracted as under:-

"The learned Government Advocate has contended that the petitioner must approach the Arbitrator even with regard to the order dated 12.06.2009. As far as this argument of the learned Government Advocate is concerned, the grievance of the petitioner is that the petitioner is directed to pay this amount without providing the particulars and how this amount has been quantified by the respondent is also not spelt out in this order. Unless particulars are furnished to the petitioner, the petitioner cannot even make out a case before the Arbitrator. Even though this has arisen out of



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contract, to express his grievance or to challenge the order, the petitioner must have the particulars basing on which this amount has been arrived at. Without knowing these particulars, the petitioner will not be in a position to put forth his defence before the Arbitrator also. Consequently, I am not able to accept the stand taken by the learned Government Advocate. In view of the non-furnishing of the particulars as to how the first respondent has arrived at the figure of Rs.41,43,889/-, the impugned order dated 12.06.2009 is set aside and the matter is remitted back to the first respondent with a direction to pass orders after providing reasonable opportunity to the petitioner and also furnish the particulars how the amount of Rs.41,43,889/- has been arrived at.

Likewise, in yet another case, the action of the respondents was set aside by this Court in W.P.No.21435 of 2010, dated 06.01.2011. The operative portion of the order reads as under:-

"6. In view of the above, I am inclined to set aside the order dated 12.02.2010, which is impugned in this writ petition and the same is set aside accordingly. The first respondent is directed to provide reasonable opportunity to the petitioner by giving proper particulars as to how they have arrived at the sum of Rs.17,64,629/- and thereafter, proceed against the petitioner on merits, if they are so advised. However, it does not mean that the respondents are curtailed from appointing the Arbitrator to resolve the dispute, which is arising out of the contract."

The same was the result in W.P.Nos.23629 to 23632 of 2012 & 30967 & 30968 of 2013 & M.P.Nos.1,1, 1 & 1 of 2012 and 1 & 1 of 2013, dated 12.02.2020. The relevant paragraphs of the judgment read as follows:-

"18. In the result, the impugned orders all dated 06.07.2012 which are the subject matters of W.P.Nos.23629 to 23632 of 2012 are hereby quashed and the matter is remitted back to the Divisional Engineer (H), (O) & (M), Chengalpet, for fresh consideration. The impugned orders which are the subject matter of W.P.Nos.23629 to 23632 of 2012 are treated as show cause notice issued by the respondents and the petitioner is directed to submit his reply within a period of four weeks from the date of receipt of a copy of this order and on



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receipt of the said reply, the third respondent is directed to pass final orders with regard to the determination of compensation payable by the petitioner within a period of six weeks thereafter on merits and in accordance with law after giving sufficient opportunity to the petitioner to place all his submissions and records including granting him the right of personal hearing. It is also made clear that the third respondent, in the final orders has to consider in accordance with law as to whether determination of compensation can be made when there is an arbitration clause available under the respective contracts.

19. Since the impugned orders which are the subject matter of W.P.Nos.23629 to 23632 of 2012 have been quashed and the matter is remanded back to the third respondent for fresh consideration, the respondents do not have the right to withhold the payments of the petitioner in respect of other contracts. Hence, the relief sought for in W.P.Nos.30967 & 30968 of 2013 has to be granted in favour of the petitioner. Accordingly, this Court directs the respondents to pay the undisputed amounts which are due to the petitioner in respect of other contracts within a period of six weeks from the date of receipt of a copy of this order. However, it is made clear that once the compensation amount is determined in accordance with this order, the respondents are granted liberty to deduct the determined compensation amount from and out of the bills payable to the petitioner in the near future."

4. In respect of quashing of the orders passed in all the previous Writ Petitions, the respondents have not adopted to follow the correct procedure in conformity with the principles of natural justice by affording a fair opportunity in determining the compensation payable by the petitioner, but are repeatedly attempting to recover the money without complying with the directions of this Court in previous rounds of litigation.

5. Considering the facts and circumstances of the case and the orders passed by this Court in previous rounds of litigation, the present impugned order passed by the fourth respondent dated 20.06.2014 in Ref.No.Na.Ka.No.E1/2454/2014 is set aside. The respondents are directed to pay undisputed amounts, which are due in respect of other contractors. The respondents are entitled to recover the money after affording a



fair opportunity to the petitioner and after determining the compensation in accordance with law.

The Writ Petition is ordered with the above directions. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Tiruvannamalai District,
Tiruvannamalai.
2. The Divisional Engineer (Highways),
NABARD and Rural Roads,
Chengalpet.
3. The Corporation of Chennai,
Rep. by its Commissioner,
Ripon Buildings, Park Town,
Chennai - 600 003.
4. The Assistant Commissioner,
Zone XII, Corporation of Chennai,
Alandur, Chennai - 600 016.

+1cc to the Government Pleader, S.R.No.12336

W.P.NO.17273 OF 2014 AND
M.P.NO.2 OF 2014

MT(CO)
PBS/22/03/2022