

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

118

CWP-25661-2022

Date of Decision: 11.11.2022

M/S ANIL KUMAR CONTRACTOR

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Chirag Girdhar, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been instituted under Articles 226/227 of the Constitution of India, 1950 seeking issuance of a writ in the nature of Mandamus directing the respondents to refund the security amount of Rs.26,04,393/- qua various development works executed by the petitioner within the Municipal limits of Rampura Phul, alongwith interest @ 18% per annum.

Learned counsel for the petitioner contends that the petitioner had executed various works assigned to it from time to time and there has never been any complaint against the works executed by the petitioner. During the year 2016-17, various development works within the Municipal limits of Rampura Phul were allotted to the petitioner which have been duly executed and payment of these works has also been released to the petitioner but security amount of Rs.25,98,393/-, which was deducted from the bills, has not been released till date. It is further contended that there is no dispute with regard to the successful completion of the development works by the petitioner and even the defect liability period has also been expired but the security amount is not being released, which is totally arbitrary in nature.

Finally, a legal notice dated 01.04.2019 was served upon the respondent No.3 calling upon him to release the security amount, but no action was taken thereupon. Thereafter, the petitioner filed CWP No.13578 of 2019, which was disposed of vide order dated 21.05.2019 with a direction to the respondent No.3 to decide the legal notice served by the petitioner within a period of 08 weeks. It was further ordered therein that in case it is found that the amount is due to the petitioner, then the same be released without any further delay. Even despite the order passed by this Court, no action had been taken by the respondents. Consequently, the petitioner filed a COCP No.3677 of 2019, whereupon, after receiving the notice of the contempt petition, the respondent No.3 decided the legal notice by passing a speaking order dated 13.12.2019, in which it was admitted that an amount of Rs.26,04,393/- on account of security is payable to the petitioner, however, it was submitted that this amount shall be released after completion of the defect liability period of five years. The COCP was accordingly disposed of with liberty to the petitioner to avail the remedies available in accordance with law. Learned counsel for the petitioner further contends that the works in question were completed in the year 2016-17 and as of now, a period of more than five years has been elapsed and no defect of any nature has been found in the works executed by the petitioner and as such, the petitioner is entitled for refund of the security amount. It is further averred that that the petitioner had again served a legal notice dated 01.12.2020 calling upon the respondent No.3 to make payment of the security amount but no action has been taken till date. It is further averred by the learned counsel for the petitioner that as of now the defect liability period has already been elapsed and as such, the withholding of the security amount by the respondents is totally arbitrary and

unjustifiable. The petitioner has made several representations to the respondents but all in vain. Finally, on 03.10.2022, the petitioner again served a legal notice (Annexure P-3) upon the respondent No.3, however, neither the payment of the security amount has been made till date nor has the respondents taken any action on the said legal notice dated 03.10.2022 (Annexure P-3).

Notice of motion.

Ms. Niharika Sharma, AAG, Punjab, who is present in Court, accepts notice on behalf of the respondent No.1 and seeks time to complete instructions.

Mr. Saurav Verma, who is the Additional Advocate General Punjab and would thus be on the panel of all Statutory Board and Corporations of the State of Punjab has been requested to accept notice on behalf of the respondents No.2 & 3.

He accepts notice on the asking of the Court on behalf of the respondents No.2 & 3.

Learned counsel for the petitioner submits that at this juncture, he would be satisfied if the respondent No.3 is directed to consider and decide the legal notice dated 03.10.2022 (Annexure P-3) in a time bound manner.

Both the learned State counsel do not oppose the prayer made by the learned counsel for the petitioner.

Accordingly, in view of the above, the present petition is disposed of with the consent of the parties and without commenting anything on the merits of the case and with a direction to respondent No.3 to consider and decide the legal notice dated 03.10.2022 (Annexure P-3) by passing a

reasoned and speaking order after affording an opportunity of hearing to the petitioner, within a period of three months from the date of receipt of certified copy of this order.

Needless to mention that upon considering the said legal notice, if any amount is found due and payable to the petitioner, the same shall be disbursed in favour of the petitioner within a further period of three months.

11.11.2022
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(VINOD S. BHARDWAJ)
JUDGE

<i>Whether speaking/reasoned</i>	<i>: Yes/No</i>
<i>Whether reportable</i>	<i>: Yes/No</i>