AD-19
Ct No.09
15.12.2023
TN

WPA No. 16357 of 2023

Jaya Construction & Company and another
Vs.
State of West Bengal and others

Ms. Santi Das
…. for the petitioners

Ms. Jyotsna Roy,
Ms. Srijani Mukherjee
…. for the State

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kr. Nag,
Mr. Tirthankar Dey
…. for the BMC

1. Learned counsel for the petitioners contends that the petitioners did several works for the respondent-authorities, that is, the Bidhannagar Municipal Corporation. After the completion of such work, completion certificates were duly issued by the Executive Engineer, PWD, Bidhannagar Municipal Corporation (for short "the BMC"). The petitioners raised bills for the work done. However, the respondent-authorities are sitting tight over the matter.

2. Learned counsel for the BMC, by placing reliance on the affidavit-in-opposition filed in the form of a report, claims that the reliefs sought in the writ petition pertain to alleged breach of contract on the part of the BMC and ought to be a subject-matter of a civil dispute at best. It is contended that the claims are disputed by the BMC and, as such, the writ court ought not to grant relief, particularly since no public law element is involved.

3. It is contended that a part of the claims is time-barred. With particular reference to the claim of Rs.1,20,119/- made by the petitioner, it is pointed out that the said claim pertains to alleged dues of the year 2012 whereas the writ petition has been filed in the year 2023, about 11 years thereafter.

4. That apart, it is contended that at least two quanta of money to the tune of Rs. 5 lakh and Rs. 2.4 lakh have already been disbursed in favour of the petitioners which has not been disclosed in the writ petition. That apart, there is palpable discrepancy between the work orders and the completion certificates as well as the pleadings in the writ petition.

5. Learned counsel for the BMC cites the judgment of *Orissa Agro Industries Corpn. Ltd. and others vs. Bharati Industries and others,* reported at *(2005) 12 SCC 725* in support of the proposition that where disputes revolve around questions of fact, the matter ought not to be entertained under Article 226 of the Constitution of India. The best course of action would be to relegate the matter to a money suit.

6. In support of the same proposition, learned counsel also cites *Godavari Sugar Mills Limited vs. State of Maharashtra and others,* reported at *(2011) 2 SCC 439*, where the Supreme Court laid down several stipulations including that normally a petition under Article 226 will not be entertained to enforce a civil liability arising out of a breach of a contract or a tort to pay an amount of money due to the claimants. The proper remedy was a civil suit. The Supreme Court went on to observe that while enforcing fundamental or statutory rights, the High Court has the power to give consequential relief by ordering payment of money realized by the Government without the authority of law. However, the Supreme Court made a distinction between money which was collected and a refund was sought in view of some erroneous assessment or legal consideration from an ordinary claim for refund of money. In the latter case, it was observed, the writ jurisdiction is used sparingly and a civil suit is the appropriate remedy.

7. Learned counsel next cites *Eastern Coalfields Limited vs. Ravi Udyog and others*, reported at *1994 Supp (2) SCC 466*, for the proposition that if there was a claim and counter-claim, the High Court acted without jurisdiction in segregating the claims to an admitted amount and to a disputed amount. It was observed that the entire claim could be decided in the civil suit to which the parties were relegated in the said case.

8. Learned counsel next relies on *Bareilly Development Authority and another vs. Ajai Pal Singh and others,* reported at *(1989) 2 SCC 116.* In the said judgment, the Supreme Court distinguished between contracts which are non-statutory and purely contractual and those which are statutory. In respect of non-statutory contracts, the rights are governed only by the terms of the contract and it was held that no writ or order under Article 226 of the Constitution can be issued.

9. A perusal of the annexures to the writ petition in the present case indicates that certain purported completion certificates have been annexed by the petitioners, in particular, those annexed at pages-23, 25, 27, 57, 61, 65, 67 and 70.

10. It is, however, observed that there is discrepancy at least in respect of some of the said completion certificates with the associated work orders which have been annexed to the writ petition, although in some of the cases (one has been pointed out by learned counsel for the petitioners), the work orders tally with the completion certificates with regard to the tender number .

11. That apart, the claim made in the writ petition is to the tune of Rs.65,90,449/-, which is based on a chart given by the petitioners in paragraph no. 21 at pages 13-15 of the writ petition. A perusal of the quanta of claims with the corresponding completion certificates given there shows palpably that most of the dates of the completion certificates given in the said chart, which are the sole basis of the claim, do not tally at all with the annexures to the writ petition. In fact, the court perused the first few completion certificates dates, corresponding to which no annexure is found in the writ petition at all.

12. Thus, although the petitioners rely on purported completion certificates, there is utter variance between the pleading and proof which would not entitle the petitioners to the reliefs claimed.

13. In any event, since the claims are disputed squarely by the respondent, a calculation and a detailed evidence-taking procedure is required to be gone into before deciding conclusively whether the claims of the petitioners are valid.

14. Moreover, to substantiate the claims, the petitioners are also required to tally the corresponding work orders with the completion certificates which again has to be in consonance with the pleadings.

15. Thirdly, the petitioners are also required to prove the veracity of the documents in due process of law as envisaged in the Code of Civil Procedure and the Evidence Act for the court to grant a monetary relief to the petitioners on the basis of such documents, particularly since the veracity of some of the documents have been controverted by the respondent.

16. Keeping in view the ratio laid down in the judgments cited by the respondent, this court is of the opinion that, in the present case, there is no clear-cut admitted claim for the court to direct the respondent to disburse the amounts claimed by the petitioners. Even if the court could have been lenient inasmuch as the work done by the petitioners pertains to a public work, which has an touch of public law element, in the circumstances as indicated above, it would be a dangerous precedent to grant the relief as sought in the writ petition in an application under Article 226 of the Constitution of India without going into a fact-finding endeavour upon adduction of proper evidence in due course of law.

17. In such view of the matter, WPA No. 16357 of 2023 is dismissed without any order as to costs.

18. However, nothing in this order shall preclude the petitioners from instituting a proper suit before a competent civil court for the present reliefs subject, of course, to the law of limitation. If such a suit is filed, the civil court shall decide all issues in accordance with law without being influenced on merits by any of the observations made hereinabove.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)