

OD-4

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1284/2023

M. K. DEVELOPERS
VS
UNION OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 14th July, 2023

Appearance:
Mr. T. Dutta, Adv.
Mr. A. Alim, Adv.
...for the petitioner

Mr. Atarup Banerjee, Adv.
Mr. Amal Kumar Datta, Adv.
...for the Union of India

The Court:- Learned counsel for the petitioner contends that the petitioner lodged several complaints alleging that bribes were demanded from the petitioner by employees/officials of the respondent authorities. On refusal to pay the same by the petitioner, its legitimate dues, for work done for the respondents, were withheld. Also, no action has been taken by the respondent authorities to follow up the complaints of bribery.

A report is filed by learned counsel for the respondent authorities, regarding the inquiry undertaken by them in respect of the allegations, pursuant to a previous order of Court.

Learned counsel for the petitioner contends that the persons named in the said report are necessary and/or proper parties to the writ petition, since comprehensive orders cannot be passed in the absence of the said persons.

Moreover, it is argued that the respondent authorities have not investigated into the specific allegations made by the petitioner satisfactorily, and the respondents are acting without authority in withholding the petitioner's dues on flimsy pretexts of the material provided by the petitioner being sub-standard.

Learned counsel for the petitioner also seeks to use an exception to the report filed in Court today by the respondent authorities.

However, upon a consideration of the arguments of the parties and the pleadings in the writ petition, it is clear that the dispute primarily raised by the petitioner is that the respondent authorities are withholding the amount due to the petitioner for work done by the petitioner for the respondents, on an incorrect premise that the materials supplied by the petitioner were sub-standard. The petitioner clearly refuses such allegation of deficiency in the materials supplied by it.

However, it is a subject matter of adduction and appreciation of evidence in detail, to assess the veracity of the allegations and counter allegations made by the parties regarding the liability of the respondents as well as whether the materials supplied by the petitioner were sub-standard.

The intricacies of the contract/agreement between the parties in that regard are also required to be gone into comprehensively, for a proper adjudication of such dispute.

Insofar as the allegations of bribery by the government officials are concerned, the petitioner is at liberty to approach the concerned police station by lodging a complaint in that regard.

Such issue cannot be decided as a fact finding forum by the writ court, let alone within the limited scope of the present writ petition.

As such, there is no scope of interference in the present writ petition. However, since the petitioner seeks to use an exception to the report filed today, which is being refused on the ground that the writ court is not a fact-finding forum, it is deemed that none of the allegation made in the said report by the respondent authorities are admitted by the petitioner. It will be open to the petitioner to rebut and refute the contentions raised in the said report before any forum where the same is relied on by the respondent authorities.

Accordingly, WPO/1284/2023 is disposed of by granting liberty to the petitioner to approach the appropriate civil court and/or refer the matter to arbitration, if so provided for in the contract and admitted by the parties, for a decision on the disputed questions raised herein. If so approached, it will be deemed that the running of limitation for staking the claim regarding the alleged dues by the petitioner commences from this day, since, taking into consideration the effect of Section 14 of the limitation Act, the petitioner was bona fide proceeding before the wrong forum, that is, the writ court, for resolution of the disputes raised herein.

It is further made clear that nothing in this order shall preclude the petitioner from lodging an appropriate complaint before the appropriate authorities and/or the police, on the allegation of bribery levelled by the petitioner. Since there is no limitation with regard to criminal complaints, such complaint, if lodged, shall be dealt with by the appropriate authorities duly, in accordance with law. This Court has not gone into the merits of the allegations

and the counter allegations made in the writ petition by the parties against each other.

(SABYASACHI BHATTACHARYYA, J.)

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