



WP No.4647 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-03-2023

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

**WP No.4647 of 2015**

Raja and Co., Represented by its  
Managing Partner,  
K.T.Ramamurthy,  
No.43, Kanagapuram Salai,  
Kannimarvalasu,  
Erode-638 112.

.. Petitioner

vs.

1.The Superintending Engineer (Highways),  
NABARD and Rural Road Circle,  
Salem.

2.The Divisional Engineer (Highways),  
NABARD and Rural Road Circle,  
Erode-2.

3.M.Raj Kumar

.. Respondents

1 / 8



WP No.4647 of 2015

WEB COPY

Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the respondents 1 and 2 to permit the petitioner to take back their entire materials as per the list annexed with their representation dated 04.02.2015 submitted to respondents 1 and 2, without permitting the third respondent to use any of the materials belonging to the petitioner at the subject site viz., Construction of Bridge at Km 67/2 of Thoppur Mettur Bhavani Erode Road.

For Petitioner : Ms.N.Santhi

For Respondents-1 and 2 : Mr.P.Sanjay Gandhi,  
Government Advocate.

For Respondent-3 : Mr.Amala Raj

### **ORDER**

The relief sought for in the present writ petition is to direct the respondents 1 and 2 to permit the petitioner to take back their entire materials as per the list annexed with their representation dated 04.02.2015.



WEB COPY

2. The petitioner is the Managing Partner of the Raja and Company.

The petitioner was successful Tenderer and awarded a contract for construction of Bridge at Km 67/2 of Thoppur,-Mettur-Bhavani-Erode Road and for which an Article of Agreement dated 10.01.2011 was entered into between the first respondent and the petitioner.

3. The petitioner was not in a position to execute the work within the stipulated period on account of non-removal of encroachments by the Department, non-availability of 32 mm full length rods in the Open Market and due to scarcity of sand.

4. Based on certain reasons, the Authorities Competent had terminated the contract on 24.10.2013, since the Project was not completed. Thereafter, the second respondent awarded the contract in favour of the third respondent, who had completed the Project and made it functional.



WEB COPY

5. The grievance of the petitioner is that he was not allowed to take back the materials belonging to him and the respondents have not granted permission to remove such materials and thus he made representation, which was also not considered. Therefore, the petitioner has filed the present writ petition.

6. The learned Government Advocate, appearing on behalf of the respondents 1 and 2, made a submission that the contract of the petitioner was terminated by the Competent Authorities on account of non-fulfilment of the contractual obligations on his part. However, the list of materials which were kept in the site, are belonging to the petitioner. During the relevant point of time, excess expenditure was incurred for the completion of the work. The excess expenditure involved was Rs.49.58 lakhs, which is to be recovered from the petitioner, since the petitioner has not fulfilled the contractual obligations.



7. Paragraph-16 of the counter affidavit filed by the second respondent states that the said amount had already been recovered from the petitioner. The petitioner may be allowed to take back the materials as per the list taken during the possession of the Department.

8. Since the respondents 1 and 2 themselves filed the counter-affidavit that the excess expenditure incurred by the Department had already been recovered from the petitioner and has stated that the petitioner may be allowed to take back the materials from the list taken during the possession of the Department. Thus, there is no impediment for the petitioner to take back his materials, which all are lying in the site.

9. In view of the facts and circumstances, the petitioner is permitted to take back his materials, which all are lying in the site as stated by the respondents 1 and 2 in their counter-affidavit.



WP No.4647 of 2015

10. Accordingly, the present writ petition stands allowed. However,

there shall be no order as to costs.

**17-03-2023**

Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

Svn



WP No.4647 of 2015

To

WEB COPY

- 1.The Superintending Engineer (Highways),  
NABARD and Rural Road Circle,  
Salem.
- 2.The Divisional Engineer (Highways),  
NABARD and Rural Road Circle,  
Erode-2.



WEB COPY



WP No.4647 of 2015

**S.M.SUBRAMANIAM, J.**

Svn

WP 4647 of 2015

17-03-2023

8 / 8