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W.P. No.33113 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2023

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

**W.P. No.33113 of 2018 in
WMP.No.38402 of 2018**

P.Gunavathy

.....Petitioner

vs.

1. The Chief Engineer,
Tamil Nadu Police Housing Corporation Limited,
Chennai-10.

2. The Superintending Engineer,
Tamil Nadu Police Housing Corporation Limited,
North Circle, Chennai-54.

3. The Executive Engineer,
Tamil Nadu Police Housing Corporation Limited,
Salem Division, Annadhanapatti Police Station Complex,
Salem.

4. The Assistant Executive Engineer,
Tamil Nadu Police Housing Corporation Limited,
Rayakottai Road, Krishnagiri – 635 001.

5. The Tahsildar,
Harur Taluk,
Harur, Dharmapuri District.

.. Respondents



W.P. No.33113 of 2018

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue an order or direction or Writ and in particular Writ in the nature of a Writ of Mandamus directing the respondents 1 to 4 to pay a sum of Rs.60 Lakhs with proportionate rate of interest based on the petitioner legal notice dated 20.05.2013 and earnest money deposit amount lying with the respondents 1 to 4 for the construction work of model school at Bedepalli Village, Soolagiri Block, Hosur Taluk, Krishnagiri District within a stipulated time that may be fixed by this Court.

For Petitioner : Mr. C.Prabakaran

For Respondents : Mr.KMD.Muhilan, AGP

ORDER

The petitioner has filed this petition seeking a direction to the respondents 1 to 4 to pay a sum of Rs.60 Lakhs with proportionate rate of interest based on the petitioner legal notice dated 20.05.2013 and earnest money deposit amount lying with the respondents 1 to 4 for the construction work of model school at Bedepalli Village, Soolagiri Block, Hosur Taluk, Krishnagiri District.

2. The case of the petitioner is that she was awarded with the contract for construction of model school at Bedepalli Village, Soolagiri Block, Hosur Taluk, Krishnagiri District on 29.08.2011 and the petitioner also started the



W.P. No.33113 of 2018

construction work and completed the construction upto 60% of the work. In the meantime, the third respondent issued a legal notice dated 21.03.2013, 22.4.2013 and 14.05.2013 to the petitioner calling upon him to explain about missing of construction materials and she has not completed the construction work under stipulated time and violated the agreement. The petitioner also explained about all the work done by her. Under these circumstances, the 5th respondent issued a proceedings to the petitioner under the Revenue Recovery Act and demanded to pay a sum of Rs.57,93,667/- Thereby, the petitioner made a representation to the respondents 1 to 4 on 14.02.2018 with the afore said prayer and the same is not considered. Hence, the present writ petition.

3. The learned counsel for the petitioner submitted that the petitioner is also a person invested huge money and carried on the construction work to the level of 60% pursuant to the contract awarded to her and there is no fund was disbursed with the scheduled period which caused the petitioner to great prejudice and there are still due is available with the respondents 1 to 4. Therefore, this Court may issue a direction to the respondent 1 to 4 to



W.P. No.33113 of 2018

consider the petitioners representation and pass appropriate orders within the stipulated time as fixed by this Court.

4. The respondents have filed their counter and the relevant paragraphs are extracted hereunder:

3. It is submitted that has narrated in para 3, the averments made the Petitioner is not correct the tender was placed Before Tender Award Committee and it was approved by The Tender Award Committee on 25.08.2011 and the work order was issued on 29.08.2011. The contractor has signed the Agreement on 16.09.2011, and the site was handed over to the work on 16.09.2011. From the above facts the work order was given immediately. All Government procedures are followed to issue the work Order. As per Agreement condition, it is clearly mentioned the duration of the period of completion 15.08.2012.

4. It is submitted that this is not true. The payment was paid to the contractor for the work done without delay. Since the contractor has participated in the competitive tender (Open Tender) and lowest rate quoted by the contractor. The contractor has agreed to execute the above work by him with quoted rate. Therefore loss/profit occurred borne by the contractor and it will not bind the Tamil Nadu Police Housing



WEB COPY



W.P. No.33113 of 2018

Corporation Limited since the rate offered by the contractor. Therefore, Tamil Nadu Police Housing Corporation Limited will not be responsible for the loss/profit due to this work.

5. It is submitted that, several notices have been issued to the contractor, but no response front her. Hence final notice has been issued to the contractor and informed to attend the Superintending Engineers meeting on 05.04.2013. The contractor has also participated in the Superintending Engineer meeting. She has informed that she was unable to start the pending work without advance. During the meeting, The Superintending Engineer told her that there is no provision for making advance payment, if the work is not continued the contract will be liable for termination and the remaining works will be completed at her own risk and cost. She has agreed and signed in the minutes of the review meeting.

It is submitted that, several notices have been issued to the contractor again and again but no response from her. The Tamil Nadu Police Housing Corporation Limited have given more chances to the contractor to complete the works. But she has not turned up, therefore in order to complete the project and to avoid further delay, final notice has been issued on



W.P. No.33113 of 2018

WEB COPY

14.05.2013 and after then termination order was issued on 06.06.2013 after balance works were completed by engaging another agency. As per tender conditions and Tamil Nadu Building Practice Manual Vol-II para No 57, it is necessary to recover the Risk & Cost from the original contractor. In this connection, necessary action was initiated through District Collector/Dharmapuri district to make revenue recovery. "

5. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing on behalf of the respondents and perused the materials available on record.

6. The facts of the case are not in dispute. Admittedly, a tender was awarded in favor of the petitioner by the tender committee for construction of model school at Bedepalli Village on 29.08.2011.

7. According to the petitioner, she has completed 60% of the work and the respondents have not disbursed any amount for the construction. According to the respondents, the petitioner has completed only 45% of the work and the payment was paid to her for the work done without any delay.



W.P. No.33113 of 2018

The Tamil Nadu Police Housing Corporation Limited have given more chances to the contractor to complete the works, but she has not turned up.

In order to complete the work, the respondents have issued notice to terminate the work order.

8. Such view of the matter, the prayer sought for by the petitioner cannot be granted when the matter involves disputed questions of fact between the parties. Further, the remedy open to the petitioner is only to file a civil suit before the appropriate jurisdictional court and this writ petition is not maintainable.

9. With the above directions, the writ petition is disposed of. No costs.

09.03.2023

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Index : Yes / No

M.DHANDAPANI, J.

7/8



WEB COPY



W.P. No.33113 of 2018

Rli

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