

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No.174/2024
CM No.391/2024

Khem Raj, age 66 years S/o Late Sh. Jagat Ram
R/o Durga Nagar Panthal, Tehsil Katra District Reasi

....Petitioner(s)

Through :- Mr. Nakul Sharma, Advocate

V/s

1. Union Territory of Jammu and Kashmir
through its Secretary/Commissioner, PWD
(R&B) Civil Secretariat, Jammu/Srinagar
2. Chief Engineer, PWD(R&B) Department,
Jammu
3. Chief Engineer PWD(R&B) Department,
Rajouri
4. Superintendent Engineer PWD (R&B)
Department, Udhampur
5. Superintendent Engineer PWD(R&B)
Department, Reasi
6. Executive Engineer PWD(R&B) Department,
Reasi
7. Janak Raj Bhagat, the then Executive Engineer
PWD(R&B) Department, Reasi.
8. Ashraf Malik, the then Assistant Executive
Engineer PWD(R&B) Department Reasi.
9. Harbajan Singh, the then Junior Engineer
PWD(R&B) Department Reasi.

....Respondent(s)

Through :-

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

ORDER
02.02.2024

1. In this petition, the petitioner prays for a writ of certiorari quashing e-NIT No.100 of 2023-24 dated 15.01.2024 as also the final show cause notice issued by respondent No.2 dated 20.12.2023. The petitioner also prays for a mandamus to the respondents to release CDR of the petitioner deposited at the time of entering into contract and also to appoint an independent expert or arbitrator to assess the loss caused to the petitioner because of inordinate delay caused by the respondents to provide dispute free land for execution of the work.

2. The petitioner has raised many disputed questions of fact in the petition, which include the reasons and circumstances which prevented the petitioner from executing the work in time. The petitioner claims that the delay in execution of the work was attributable to the respondents whereas in the impugned show cause notice, the respondents blamed the petitioner for not completing the work. Whether or not the petitioner is responsible for the delay is a complicated question of fact, which cannot be determined by this Court in the exercise of extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India.

3. The dispute between the petitioner and the respondents falls clearly in the realm of contract and involves determination of highly complicated disputed questions of fact. Either arbitrator, if there is a arbitration clause in the contract or a Civil Court in the absence of such clause are the forums where such disputes can be agitated and adjudicated upon.

4. For the foregoing reasons, I find no reason to entertain this petition and, thus, relegate the petitioner to the alternative remedies available under law.

However, the respondents are directed to take joint measurements of the work, if any, executed by the petitioner and preserve the evidence for resolution of the dispute, if any, raised by the petitioner before allotting the balance work to the new contractor.

5. Writ petition along with connected application stands disposed of.

1.

(Sanjeev Kumar)
Judge

Jammu:
02.02.2024
Vinod, PS

