



A.S.No.181 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 02.07.2025

Pronounced on: 09.07.2025

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Appeal Suit No.181 of 2025
& C.M.P.No.3899 of 2025

1. Executive Engineer,
Public Works Department Building Section,
Villupuram.
2. Superintending Engineer,
Public Works Department Building Complex,
Vellore.
3. Superintending Engineer,
Public Works Department Building Complex,
Salem.
4. Chief Engineer,
Public Works Department Building Complex Chepauk,
Chennai.
5. District Collector,
Collector Office Complex,
Villupuram.
6. Tahsildar,
Taluk Office,
Kallakurichi.
7. Head Master,

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Government Higher Secondary School,
Chideripattu,
Sankarapuram Taluk,
Villupuram District.

8. Principal Secretary,
Public Works Department Secretariat,
Fort St. George,
Chennai.9.

9. Principal Secretary,
School Education Department Secretariat,
Fort St. George,
Chennai.9.

... Appellants/Defendants

/versus/

G. Ranjithkumar,
Managing Partner,
Civil Contractor,
AGR Engineering Construction,
No. 17/3, Ulagappa Chetty Koil Street,
Kallakurichi, Villupuram District.

...Plaintiff /Respondent

Appeal Suit has been filed under Section 96 of the Civil Procedure Code, pleaded to set aside the decree and judgement passed in O.S.No.19 of 2018 dated 05.09.2023 on the file of Additional District Court (Fast Track Court), Villupuram and allow the appeal.

For Appellants : Mr.R.Siddharth,
Additional Government Pleader
For Respondent : Mr.T.Balachandran

J U D G M E N T



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The suit filed by the contractor to declare the letters of termination dated 19.09.2013 and 03.07.2015 issued by the Executive Engineer of PWD as void and the distraint notices on 31.03.2017 and the remainder letter dated 05.05.2017 to remit Rs.21,61,850/- as void. Consequentially, mandatory injunction directing the Executive Engineer, PWD, to pay a sum of Rs.9,89,028/- with 12% interest.

2. After contest, the Court below in O.S.No.19 of 2018 *vide* judgment and decree dated 05.09.2023, declared the distraint notices dated 05/05/2017 and 31.03.2017 as null and void. However, the claim for recovery of Rs.9,89,028/- by way of mandatory injunction was declined.

3. The Appeal filed by the PWD/defendants, being aggrieved by the decree declaring the distraint notice as void, thereby denying the right of the PWD to recover Rs.21,61,850/- for the breach of contract as contemplated under Clauses 60(a), 60(b) and 71 of Tamil Nadu Buildings Practise.

4. The facts leading to the appeal in short:-



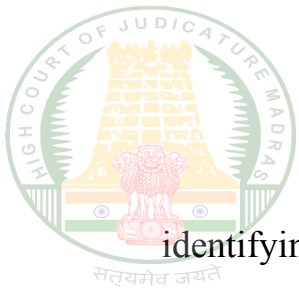
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For the sake of convenience, the appellants/Defendants are referred as

WEB COPY 'PWD' and the respondent/Plaintiff as the 'Contractor'.

For the tender was floated by the PWD for the construction of 20 classrooms, science laboratory, toilet blocks and compound wall in the Government Higher Secondary School at Sitheripattu, Villupuram District, M/s.AGR Engineering Construction (hereinafter referred as the contractor) was the lowest tenderer and the tender Award Committee accepted his tender in its meeting dated 11.11.2011. The approximate value of the contract was agreed as Rs.1,60,89,756/- and the period of completion of work was fixed as 12 months from the date of handing over the site. On 07/02/2012, an agreement was executed between the Superintending Engineer, PWD, Salem-9 (second defendant/second appellant) and M/s.AGR Engineering Construction, represented by its Managing Partner, Mr.Ranjithkumar (Plaintiff/Respondent) and the site was handed over to the Contractor on 08.02.2012.

5. Admittedly, the construction was not completed by the Contractor within the stipulated period of 12 months. The delay in completion was due to not



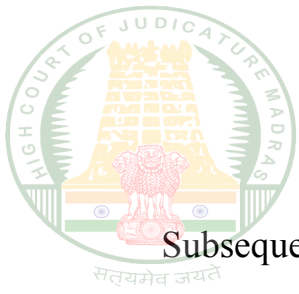
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identifying the boundaries for the construction of compound wall for the toilet.

Nevertheless, the Contractor continued to carry on the other work. While so, PWD, without following the terms of the contract, unilaterally terminated the contract on 03.07.2015 and issued the distraint notices, forfeiting the earnest money deposit, Security Deposit the part payment towards the work done and also for the loss incurred by PWD to complete the work by engaging a new contractor.

6. The Contractor deny proper handing over of the complete site. He denies the three extension of time on 10.05.2013, 11.08.2013 and 15.11.2013 without penalty and further, he also denies the subsequent extension of time with on 15.11.2014 with penalty of Rs.5000/- and proper service of the distraint notices.

7. On the other hand, the case of the PWD is that, the site was handed over the contractor as early as 08.02.2012. He never during the existence of contract reported about not handing over the site. He never whispered about the boundary dispute for constructing the compound wall till his letter dated 10/03/2017. By the time, the contract was already terminated for not completing even 50% of the work after giving extension of time upto 41 months.



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Subsequently, a new contractor was engaged on 26/08/2016 and he completed the work within 10½ months. For the loss incurred by the PWD to complete the work, the contractor is liable to compensate, the difference as per terms of the contract.

8. Heard Mr.Siddharth, Learned Additional Government Pleader for the appellants and Mr.T.Balachandran, Learned Counsel for the respondent. The evidence placed before the Court by either side. The case is based on records and the terms of the contract. On the side of the contractor (plaintiff), 34 documents (Ex.A1 to Ex.A34) marked. On the side of PWD (defendants), 27 documents (Ex.B1 to Ex.B27) marked.

9. The trial Court, after analysing the records, had held that the contractor, after completing 46% of the work and receiving part payment, is estopped from pleading that the site was not handed over to him as per the procedure laid in G.O.555, dated 17.11.1999 (Ex.A-1). The issue of non-marking of the site boundary had been tagged by the Contractor belatedly only when he wrote to the 2nd defendant explaining the delay for not completing the work within the time prescribed. Ex.A-18, a letter of the contractor, dated 28/11/2014 is in



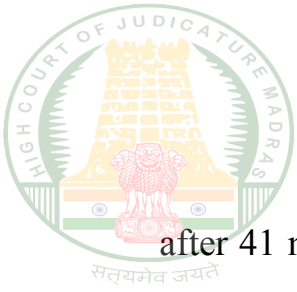
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response to the letter of the 2nd defendant, dated 16/10/2014. In this letter, the

Contractor had cited several reasons for not completing the work. One such reason is rival claim by the villagers over the toilet and the compound wall area. This reason even assumed to be true, it cannot apply for not completing the remaining part of the construction which includes 20 classrooms and science laboratory. In this letter, the Contractor has expressed his difficulty in completing the contract due to accident and bad health.

10. The Trial Court considering Ex.A-28 to Ex.A-31, which are communications between Assistant Engineer, P.W.D and Head Master of the concern school and the communication between the Head Master and the Tahsildar between 10/01/2017 to 02/02/2017, had arrived at a conclusion that the boundary dispute was not resolved till 02/02/2017, even after entrusting the work to new contractor, therefore the Contractor has every justification for alleging, he was not handed over the complete site. The trial Court has held that, nonetheless this cannot be a reason for not completing the rest of the work within the time granted.

11. The fact that only less than 50% work worth Rs.74,49,989/-, even

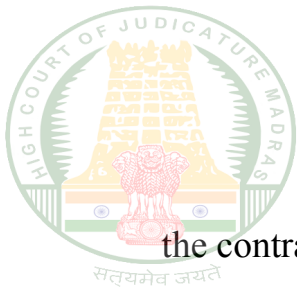


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after 41 months was taken into consideration by the Court below and held that the plaintiff has wantonly delayed the completion of the work. Having observed so, while concluding, the trial Court has declared that till 10/03/2017, PWD did not hand over the complete site for constructing the compound wall and other portion of the building.

12. This above observation goes contrary to the observation that the termination of contract dated 19/09/2013 is not valid but the termination of contract dated 03/07/2015 is valid. Having held that the subsequent termination of contract in the year 2015 is valid, the question of handing over the complete site thereafter does not arise.

13. The plea of the contractor that the extension of time granted by the Superintending Engineer, PWD is not valid since it is not issued with the approval of the Tender Approval Committee rejected by the trial Court referring Clause 53(1) of the Tamil Nadu Building Practice (TNBP) which empowers the Executive Engineers to grant extension of time and shall be ratified by the Superintending Engineer/Chief Engineer. The trial Court has rightly declined to accept the plea of



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the contractor that his contract never extended validly by PWD.

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14. The contractor though pleaded that the extension orders not communicated to him he, in the cross examination before the Court has admitted that he continued the work even after the expiry of one year period prescribed, on after issuance of the extension orders. He had admitted through his letter dated 28/11/2014 Ex.A-18, that he is not in a position to complete the contract for multiple reasons. Hence, the Court below had held that the termination order dated 03.07.2015 is valid. At the same time, for want of records to prove the extension of time were granted only on the request of the contractor, the trial Court has drawn inference that the cause for delay in completing the work was mutual.

15. The trial Court, after recording the finding that the contractor failed to complete the contract within the time agreed and not completed even after the extension of time, held that he is liable to forfeit the earnest money deposited and 5% of the contract value in sum Rs.9,89,028/- for his breach of contract and not entitled for recovery of that amount from PWD. At the same time, regarding



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distraint notice for recovery of the additional Rs.21,61,850/- towards loss incurred

in engaging new contractor for completing the work held as improper. In this case, though the trial court has held that the termination notice dated 03.07.2015 issued by PWD, Chief Engineer is a valid termination and forfeiture of EMD and Security deposit are valid held the distraint order for recovery of loss to a tune of Rs.21,61,850/- alone is invalid since it is excessive.

16. Point for consideration has narrowed down to whether having held that the contractor has committed breach of the contract by not completing the work within the time prescribed and having held that the second termination notice dated 03.07.2015 issued by Chief Engineer, PWD is valid, can the Court deny the right of recovering the additional expense of Rs.21,61,850/- incurred by PWD due to the breach of contract ?

17. Under Chapter-H of the Tamil Nadu Buildings Procedure (TNBP), which form part of the contract Ex.A-1, the provisions relating to the date of commencement, completion, delay, extension, suspension of work and forfeiture are dealt in Clauses 55 to 57.



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18. In the present case, the works contract commenced on 08/02/2012 ought to have completed within 12 months. However, in spite of several extensions and show-cause notices for termination of the contract, only 46% of the work completed as on the date when the contract got terminated finally by the Executive Engineer, PWD, Villupuram on 03/07/2015 *vide* Ex.A-21 and duly ratified by the Chief Engineer, PWD on 08/09/2015 (Ex A-15).

19. After the termination, PWD had issued notice to show cause why the contractor should be not placed under defaulter list. To this show-cause notice Ex.A17, the contractor has given his reply Ex.A-22, dated 02/01/2017. The Superintending Engineer has responded to this reply and sought for certain more details from the contractor. The letter from the Superintending Engineer, PWD is marked as Ex.A-23. However, there is no evidence to show that the contractor subsequently blacklisted and placed the contractor under defaulters list. Meanwhile, we find that the distraint notice dated 31.03.2017 (Ex.A-25) issued followed by a remainder dated 05.05.2017 (Ex.A-26).



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20. Clause 57.1 of TNBP, empowers the Executive Engineer to cause

notice to the Contractor and demand compliance with the terms of the contract. If the contractor neglects to comply within 7 days from the receipt of the notice, it shall be lawful for the Executive Engineer to impose penalty or forfeiture on the contractor. As per Clause 57.2, the penalty or forfeiture referred to in Clause 57.1, shall not exceed 5% of the work executed and will be imposed in cases where the contractor is allowed to proceed with the whole or part of the works. The penalty imposed is subject to waiver or modification at the discretion of any authority higher in rank than the Executive Engineer.

21. Clause 57.3 and 57.4 are more relevant to decide whether in this case the PWD can claim a sum the excess expenditure of Rs.21,61,850/-, apart from the amount forfeited by invoking clauses 57.1 and 57.2.

"57.3 It shall be a further right of the Executive Engineer to give any port of the work to any other contractor at his discretion or have it done departmentally in order to maintain the rate progress and the contract shall then be determined for only that portion of the work given to the contractor or done departmentally. The forfeiture under clause 57.2. will in these circumstance be applied any excess expenditure incurred on this account shall Le recovered from the original contractor.



57.4. Determination of the contract referred to in Clause 47.". shall carry with it the forfeiture at the Security deposit. After determining the contract, the Executive engineer shall have the right to give any part of the work to any other contractor in the unexecuted portion of contract, in which case any expenses which may be incurred in excess of such amount which would have been paid to the original contractor if the whole work had been executed deducted from any money due to him by Government it under this contract or any other account what so ever. Provided, also that if the expenses incurred by the Government are less than the amount payable to the contractor at his agreement rates the difference will not be paid to the contractor."
(emphasis added)

22. In the distraint notice and the reminder marked as Ex.A-25 and Ex.A-26, the Executive Engineer, PWD, had informed the contractor about the termination of the contract on 03/09/2015 and the engagement of a new contract to complete the work. The excess expenditure incurred on this account and the amount payable after adjusting the 5% of the bill amount retained is given as below:-

Agreement value:	Rs.1,60,89,555/-
Value of the work executed:	Rs.74,49,989/-
Excess expenditure incurred:	Rs.28,28,900/-



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Agreement value:	Rs.1,60,89,555/-
5% of the bill amount retained:	Rs.6,67,028/-
Balance payable:	Rs.21,61,880/-

23. According to the contractor, in his plaintiff he has averred that the PWD is withholding totally a sum of Rs.9,89,028/- which they are liable to pay back to him with interest at the rate of 12%. The break-up given by the contractor for this amount, is as follows:-

Earnest Money Deposit and Security Deposit :	Rs.3,22,000/-
5% of the bill amount withheld:	Rs.3,72,499/-
Bill passed but not paid :	Rs.2,94,529/-
Total	Rs.9,89,028/-

24. This Court, on examining the impugned distraint notice, finds that the distraint notice issued details about the heads of expenditure incurred in excess due to engaging a new contractor. It does not contain even detail about when, to whom and for what amount the contract given. Doubt arises about the veracity of the details in the distraint notice for the below reason also.

25. If the contractor had done work only worth Rs.78,49,989/- as contended in the distraint notice, then 5% of the bill paid will be around



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Rs.3,90,000/- only, but what the notice says is Rs.6,67,028/- is withheld by the

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26. Therefore, it is appropriate to hold the notice of termination and forfeiture of EMD, Security Deposit and 5% of the bill amount payable is valid in view of Clauses 57.1 and 57.2 of TNBP. The contractor has not challenged the order of confiscation for waiver or modification before the officer higher to the rank of Executive Engineer as contemplated under Clause 57.2. However, the distraint notice to recover Rs.21,61,686/- cannot sustain since it is passed without affording opportunity and in cryptic manner without details which required for any person who suffers the distraint order to accept or challenge it.

27. As a result,

(a) The declaratory decree granted by the trial Court to the effect that, till 10.03.2017, the defendants failed to earmark the boundary and hand over the site to the plaintiff is hereby set aside.



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(b) The relief of permanent injunction restraining the defendants not to proceed with the action to place the contractor under defaulters list is also set aside.

(c) The decree of declaration that the distraint notices dated 31.03.2017 and 05.05.2017 to the extent of Rs.21,61,850/- invalid is confirmed.

(d) The parties shall bear their respective costs.

28. With the above modification, the *Appeal Suit is partly allowed.*

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.07.2025

Index :Yes/No.
Neutral citation :Yes/No.
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To,

1. The Additional District Court (Fast Track Court), Villupuram.
2. The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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