
(2018) 02 CHH CK 0332
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 453 Of 2018

Girja Shankar Dubey

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 20-02-2018

Acts Referred:

Citation : (2018) 02 CHH CK 0332

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Hamida Siddiqui, Ashish Surana, H.B. Agrawal, Prabha Sharma

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J

1. The petitioner executed contracts awarded by the Nagar Panchayat, Dondilohara, District Balod and despite issuance of completion certificate to the petitioner, the bills were not paid to him leading to filing of the Writ Petition (C) No. 579 of 2017, Girja Shankar Dubey v. State of Chhattisgarh &

Others, and other connected matters. In the batch of the writ petitions, this Court directed the petitioner to move a representation before the Collector,

District Balod raising his grievance and the Collector was directed to decide the dispute. Now, the Collector has decided the dispute by order dated

02.08.2017 and held that no balance sum of amount remained to be paid to the petitioner, being aggrieved against the order of the Collector, this writ

petition has been preferred by the petitioner.

2. Learned counsel appearing on behalf of petitioner would submit that impugned order dated 02.08.2017 as well as the inspection report dated

07.06.2017 is perverse, arbitrary, illegal and is unsustainable in law and,

therefore, it is liable to be set aside.

3. Per contra, learned counsel appearing on behalf of respondent No. 5 would oppose the submissions made by learned counsel for the petitioner and

submits that petition involves disputed question of fact and as such liable to be dismissed.

4. I have heard learned counsel for the petitioner, considered their rival submissions made herein above and also gone through the record with utmost circumspection.

5. The Collector, District Balod has already decided the dispute and held that no balance amount remained to be paid to the petitioner. However, the petitioner is raising certain factual dispute in the contractual matter aggrieved by the order of the Collector which cannot be gone into by the Writ Court.

6. The legal position in this regard is no longer res-integra. In the matter of National Highways Authority of India vs. Ganga Enterprises and another (2003) 7 SCC 410, the Supreme Court has clearly held that in case of claim arising out of breach of contract, the writ petition is not an appropriate remedy for im- peaching contractual obligations.

7. The above-stated decision has been relied upon by the Supreme Court in the matter of Orissa Agro Industries Corporation Ltd and others Vs.

Bharati Industries and others AIR 2006 SC 198 and held as under:-

11. In the instant case the High Court has itself observed that disputed questions of fact were involved and yet went on to give directions as if it was

adjudicating the money claim in a suit. The course is clearly impermissible. (See: General Manager, Kisan Sahkari Chini Mills Ltd., Sultan- pur U.P. v.

Shatrughan Nishad and others (2003) 8 SCC 639, Rourkela Shramik Sangh v. Steel Authority of India Ltd. and An- other (2003) 4 SCC 317.

12. In National Highways Authority of India v. Ganga En- terprises and Another (supra), it was observed by this Court that the question whether the

writ petition was maintainable in a claim arising out of a breach of contract should be answered first by the High Court as it would go to the root of the

matter. The writ petitioner had displayed ingenuity in its search for invalidating circumstances; but a writ petition is not an appropriate remedy for

impeach- ing contractual obligations. (See: Har Shankar and others etc. v. The Deputy Excise and Taxation Commissioner and others AIR 1975 SC

1121 and the Divisional Forest Officer v. Bishwanath Tea Co. Ltd. AIR 1981 SC 1368.

8. Similarly, in the matter of Gujarat Maritime Board Vs. LandT Infrastructure Development Projects Ltd. and Anr. AIR 2016 SC 4502 the Supreme

Court has held that where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract and held as under:-

10. 70.6. Ordinarily, where a breach of contract is complained of, the party complaining of such breach may sue for specific performance of the contract, if contract is capable of being specifically performed. Otherwise, the party may sue for damages.

9. In view of the aforesaid submission, the writ petition involves disputed question of fact arising out of breach of contract and therefore, the writ petition as framed and filed is not maintainable and it is dismissed as not maintainable. However, this will not bar the petitioner to proceed in accordance with law. No order as to cost(s).