

(2014) 12 JH CK 0062
In the Jharkhand High Court
Case No : W.P. (C) No. 3158 of 2013

Kashyap Construction Co. Ltd.

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-12-2014

Acts Referred:

Citation : (2015) 1 JLJR 770

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Manoj Tandon, Advocates for the Appellant; Abhay Prakash, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Seeking quashing of letter dated 9.4.2013, the petitioner has preferred the present writ petition. Awarded the work on the basis of an agreement dated 22.2.2009 for construction of residual earth work lining and structures in OL-7 (Mahulia Minor) K.M. 8.250 of Mahulia Distributory, the petitioner has claimed that though, the clear-site free from all encumbrances, was not provided to the petitioner and therefore, the work could not be completed in time, vide letter dated 9.4.2013 a decision has been taken to terminate the contract.

2. Mr. Manoj Tandon, the learned counsel appearing for the petitioner submits that, though it has been accepted in letter dated 9.4.2013 that about 30% of work has been completed by the petitioner however, no payment has been made to the petitioner. Referring to letter dated 8.3.2013 it is submitted that, admittedly either the land was not acquired or compensation was not paid to the land owners till 8.3.2013 and thus, it is apparent from the record of the respondents that the petitioner faced difficulties in execution of the work under contract due to reasons attributable to the respondents.

3. As against the above, Mr. Abhay Prakash, the learned J.C. to G.A., appearing for the respondent-State of Jharkhand submits that, letter dated 9.4.2013 is only

a communication of the decision taken to terminate the contract and it is not the order terminating the contract. Several notices were issued to the petitioner, however, the petitioner could not complete the work and therefore, the department has rightly taken a decision to terminate the contract.

4. Mr. Manoj Tandon, the learned counsel appearing for the petitioner submits that, this writ petition may be disposed of with a direction to the respondent No. 2 to pass, an order for final measurement for the work done by the petitioner and the amount due to the petitioner would be paid.

5. The learned counsel appearing for the respondent-State of Jharkhand submits that, though payment has been made to the petitioner however, if any amount is found due, it would be paid to the petitioner in accordance with law.

6. A perusal of the materials on record indicates that because of non-payment of compensation to the villagers for the acquired land, they created problems due to which the petitioner faced difficulty in completion of work. The petitioner vide letters dated 12.3.2011, 4.5.2011, 14.9.2011 and 15.5.2012 requested the respondent-authorities for payment of compensation to the land owners and for taking necessary steps for providing clear site, so that it can complete the work. In the counter-affidavit, the respondents have admitted the difficulty faced by the petitioner and, the respondents granted extension of time to the contractor. It is further submitted that the respondent-authorities asked the Land Acquisition Officer to expedite the payment to the land owners. From the record it also does not appear that a final decision terminating the contract has been taken by the respondents. Accordingly, this writ petition is disposed of with a direction to the respondent No. 2 to order final measurement of the work done by the petitioner, if already not measured. If an amount is found due to the petitioner that should be paid to the petitioner, within a period of six weeks.