

(1994) 01 AHC CK 0103

In the Allahabad High Court

Case No : Civil Mise, Writ Petition No. 10781 of 1993

Radha Raman Misra

APPELLANT

Vs

Executive Engineer, Roral Engineering Services and Others

RESPONDENT

Date of Decision : 11-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 AWC 564 : (1994) 1 UPLBEC 552

Hon'ble Judges : R.A. Sharma, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : Ajit Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Petitioner claims to have constructed a link road Sikan-dara-Rohera passing through Tulapur measuring 2 Kms in length and 7 1/2 feet in "width and 1 meter in height but the complete road could not be construct? in view of the order passed in a Civil suit No. 870 of 1988. Petitioner made a claim before the District Magistrate/Collector, Allahabad for paymeat of that part of the road which is alleged to have been constrated by him. No payment having been made, he has filed a writ petition No. 1992 of 1991 before this Court which was disposed of with the observation that the Collector may decide the petitioner"s representation within certain time specified thereto. The Collector thereafter vide Order dated 24-4-1992 decided against the Petitioner. Petitioner thereafter filed this writ petition before this Court in which an interim order was passed directing the Petitioner to make an application before the District Magistrate for payment in accordance with his order which has been filed, as Annexure No. 7 to the writ petition. Petitioner has filed m application alongwith an Affidavit mentioning therein that no order has been passed by the Collector so far.

2. We have heard learned counsel for the Petitioner and the learned standing counsel.

3. From the perusal of the writ petition, it is apparent that the grievance raised by the Petitioner is purely contractual in nature. The contract whether express or implied under which Petitioner claims to have worked is a non-statutory contract which can not be enforced under Article 226 of the Constitution of India. In this connection reference may be made to *Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others*, relevant passage from which are extracted below:

There is a line of decisions where the contract entered into between the State and the persons aggrieved is non statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to (sic) the authorities to remedy a breach of contract pure and simple: *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, . *Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others*, and *Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd.*, .

4. Learned counsel for the Petitioner has in this connection placed reliance on - *M/s. Hyderabad Commercials Vs. India Bank and others*, and *Sanjai Palace Group Housing Association v. Agra Development Authority* 1992 (2) ARC 151 . In the case of *M/s Hyderabad Chemicals (Supra)* fact that the Bank had transferred the amount from the account of the Appellants to the account of Respondents therein was admitted. It was further admitted that such transfer was unauthorised and the bank had also admitted its liability. The High Court dismissed the writ petition on the ground of alternative remedy of suit. Supreme Court reversed that decision on the ground that when material facts were admitted by their Bank, there was no justification for dismissing the writ petition on the ground of alternative remedy of suit. It was not a case of enforcement of a non (sic) statutory contract. In case of *Sanjai Palace Group Housing Association (supra)*, the question of enforcement of non statutory agreement under Article 226 of the Constitution was neither argued nor decided. In fact, whether the agreement under which the houses were allotted were of statutory or non statutory character was not dealt with in that case. This case as such cannot be treated as an authority for the proposition that a non statutory contract can be enforced by High Court under Article 226 of the Constitution. A decision is an authority for what it actually decides. In *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, Supreme Court has laid down as follows;

A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it .

On this topic this is what Lord Halsbury LC said in *Quinn v. Leathern* 1901 AC 495.

5. A decision cannot be an authority on a question which was not raised before the Court. In this connection reference may be made to the case of *Rajput Ruda*

Meha and Others Vs. State of Gujarat, , wherein it is laid down as below:

As the question of validity of S. 384 of Code of Criminal Procedure was neither " raised nor argued, a discussion by the Court after pondering over the issue in depth would not be a precedent binding on the Courts. The decision is an authority for the proposition that R. 15 (1) (c) of O. XXI of Supreme Court Rules should be read down as indicated in the decision.

6. In the end learned counsel for the Petitioner has submitted that Collector has already passed an order directing for payment of the amount to the Petitioner. We find that there is no order passed by the District Magistrate directing for payment of the amount to the Petitioner. Annexure No. 7 to the writ petition on which reliance has been placed by the Petitioner is merely one line order directing that order of the C.D.O. may be complied with in accordance with rules. The order of the C.D.O. is filed as Annexure No. 5 to the writ petition which says that payment may be made to the Petitioner in accordance with the rules. What is the amount to be paid to the Petitioner. What are the rules which are to be followed, are not mentioned. Only a recommendation has been made on the basis of which this Court cannot issue a writ of mandamus directing the District Magistrate to make the payment. The allegations raised by the Petitioner in this writ petition are the allegations which can only be proved by an oral and documentary evidence for which Civil Court is an appropriate forum. Petitioner should as such file a Civil Suit before the appropriate Civil Court. It will also be open to the Petitioner to make a representation before the appropriate authorities and if such a representation is made same should be decided expeditiously.

7. With the above observations, the writ petition is dismissed on the ground of alternative remedy.