
(2002) 07 MP CK 0026
In the Madhya Pradesh High Court
Case No : Writ Petition No. 4033 of 1987

R.K. Builders

APPELLANT

Vs

Municipal Corporation, Sagar and others

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 55

Citation : (2003) 1 MPLJ 148

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : Ravish Agrawal with Ajay Ojha, for the Appellant; N.S. Kale with Harbinder Singh for Respondent No. 1 and Shashank Shekhar for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

In this writ petition the petitioner M/s R.K. Builders has prayer for reliefs; to direct the Municipal Corporation, Sagar, to execute an agreement with the petitioner in terms of the resolution dated 1-10-1985 and to make payment of Rs.4,15,536=00 to the petitioner for survey, designing work done.

In the writ petition it is averred that petitioner is an Architect Engineer running a firm in the name and style of R.K. Builders. Shri R.K. Shrivastava is the sole proprietor of the said firm and a registered valuer recognised by the Ministry of Finance, Govt. of India. There was a proposal to construct a bus stand and shopping centre near Sagar lake, Katra Bakshi Khana, Sagar. Petitioner submitted a written offer Annexure P.2 in May, 1984 setting out terms and conditions to take up the aforementioned project. The professional services were to include surveying and levelling, preparation of layout plans, Architectural and structural details, preparation of estimates and supervision of the construction work. The entire work was divided in three parts viz. surveying and levelling,

preparation of layout, Architectural and structural details; estimation of cost and supervision of the works. It was to be undertaken by the petitioner at the rate of 3%-2% of the estimated cost of the project.

On the basis of the written offer made by the petitioner, the Municipal Corporation, Sagar, issued a work order Annexure P. 3 on 15-10-1984 intimating the petitioner that he would be paid for the expenses to be incurred for survey work. As per Annexure P. 4 dated 17-12-1984 petitioner was asked to prepare and submit layout plan which he prepared and submitted. Subsequently, as per order Annexure P. 5 dated 11-2-1985 petitioner was asked to submit the detail plan i.e. architectural and structural details of the project. Petitioner submits that he completed surveying, levelling, preparation of the layout, architectural and structural details and the same were placed before the General body of the Municipal Corporation, Sagar. The layout was to be modified. All the drawings i.e. layout plans, architectural and structural details were approved with modification and a direction to auction the shops under this project was approved as per resolution no. 8 dated 4-3-1985 of the General Committee of Municipal Corporation, Sagar. Another letters P. 6 and P. 7 were issued to the petitioner communicating the resolution on 25-3-1985.

Petitioner submits that the powers of the Commissioner are specified in section 55 of the M.P. Municipal Corporation Act, 1956 (hereinafter referred to as "the Act"). As per resolution no. 3 dated 1-10-1985 the Municipal Corporation, Sagar approved payment to be made to the petitioner and directed a formal agreement to be drawn for construction of the project. No formal agreement was entered into. The project itself was not undertaken by the Municipal Corporation and petitioner was informed that no payment could be made. As project was aborted, no agreement was entered into hence he could not be paid any amount. This communication contained in letter (P. 1) was sent on 6-11-1985 to the petitioner.

A return has been filed by the respondents no. 4 and 5. Respondents no. 4 and 5 contend that there was no concluded contract between the petitioner and the Municipal Corporation, Sagar. The financial status of the Municipal Corporation is very poor and it was not able even to deposit provident fund of its employees, water, electricity charges and contributions towards repayment of bank loans taken by its employees. There was no budget allocation either for execution of the scheme or for payment to the petitioner in respect of the work done by them. There was no question of supervision of the construction work as the same had not been undertaken. The planning and survey if any done by the petitioner has not been accepted by the Corporation and, therefore, no question of payment arises. The scheme for the construction of the Bus stand has been taken up by the M.P. State Road Transport Corporation which has taken assistance from the petitioner and has also made payment for plan etc. as stated by them in their letter dated 2-1-1988 Annexure R.1.

Shri Ravish Agrawal, learned Sr. counsel appearing for the petitioner, submitted that the petitioner has done the work of surveying, levelling, preparation of the

layout, architectural and structural details. Thus, the petitioner ought to have been paid. As per letter issued by the Commissioner an assurance was made that petitioner would be paid for the work done by him. Though no formal agreement was entered into with the petitioner, however, he had not rendered services gratuitously. It is further submitted that though letter Annexure R. 1 was issued on 2-1-1988 by M.P. State Road Transport Corporation which indicates that payment of Rs. 29419=34 has been made to the petitioner but that is only with respect to the structural designs and map of bus stand not with respect to the other work which was assigned to the petitioner as per the correspondence Annexure P. 3. It indicates that work of "Bakshi Khana" was in addition to the bus stand and shopping complex.

Shri N.S. Kale, learned Sr. counsel assisted by Shri Harbinder Singh, submits that there was no concluded contract between the petitioner and the Municipal Corporation, Sagar, petitioner has been paid for the work of surveying, preparation of layout, architectural and structural details as per Annexure R. 1, and in the absence of an agreement entered into between the parties, it is not open to the petitioner to make the demand of amount at the rate of 2% of the cost of work for the entire work which has not been undertaken by the Municipal Corporation Sagar. The work was dropped at the initial stage itself and it was not undertaken. In view of the absence of formal contract, matter being in realm of contract the writ petition cannot be entertained. Learned counsel for the respondent has relied upon the various decisions of the Apex Court in Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, and in Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, it has been laid down that the disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter of adjudication by a civil court or in arbitration if provided for in the contract. Whether any amount is due and if so, how much and refusal of the appellant to pay it is justified or not, are not matters which could have been agitated and decided in a writ petition. The contractor should have been relegated to other remedies. Reliance has further been placed on Haryana Urban Development Authority and Another vs. Anupama Patnaik, (2000) 10 SCC 649, wherein it is laid down that question of fact cannot be raised in writ jurisdiction. Another decision is relied upon in State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., , in which it has been held that seriously disputed questions or rival claims arising out of breach of contract are required to be investigated and determined on basis of evidence led in a civil suit.

A decision of this Court in United Collieries Ltd. and Another Vs. Engineer in Chief, South Eastern Rly. and Others, , has also been pressed into service by the respondent Corporation. It has been held that contractual rights cannot be enforced. Proper remedy is the civil suit. Any dispute between the parties with regard to the rights and privileges granted under a contract must be litigated in the ordinary Civil Courts and not in proceedings under Article 226. It is well recognized that under Article 226 and 227 of the Constitution directions cannot

be given for enforcing, or preventing a breach of, rights and obligations contractual in character. There is no dispute with the aforesaid propositions and this Court cannot determine the disputed question of facts in the writ petition when the breach of contract is involved. Civil suit is the remedy but determination itself has not been made in the instant case of the amount which may be due. It is not considered appropriate to dismiss the writ petition after 15 years of its pendency before this Court.

In the instant case it has not been disputed that some work has been done by the petitioner. On being required by Corporation on express condition of making payment for survey plan but for part of the work of Bus stand he has been paid by MPSRTC as apparent from R. 1 but for the part of the work of Bakshi Khana he has not been paid. This fact is not in dispute. The Corporation is bound to act fairly even in the absence of entering into the concluded contract when work of survey and preparation of plan etc. was done. It is bounden duty of the Corporation to make the payment otherwise same may tantamount to taking of begaar which is expressly prohibited under Article 23 of the Constitution of India. In my opinion, for the work rendered by the petitioner Corporation is bound to make payment to the petitioner.

Next question for consideration is whether petitioner is entitled to receive payment at the rate of 2% for the entire work. Project were not undertaken by the Municipal Corporation after preliminary stage for survey, preparation of layout and structural and architectural designs. Petitioner has submitted the work upto said stage only to the Municipal Corporation. The documents are on record. The petitioner completed the surveying, levelling, preparation of the layout, architectural and structural details and the same were placed before the General body of the Municipal Corporation, Sagar. The layout was modified and shops were to be auctioned. As no agreement was entered into between the parties and full work was not done petitioner cannot claim for a sum of Rs. 4,15,513/- as claimed by him in the writ petition. However, it is clear that at the same time petitioner submitted the layout designs, structural and architectural designs and preparation of survey which was undertaken for which he was assured of payment by Commissioner, Municipal Corporation, Sagar as per letter P.3. He was to be paid as per letter (P.4). Detailed plan was required to be submitted by the petitioner as per communication Annexure P. 5.

It is also apparent that as per designs and maps submitted by the petitioner work of bus stand has been undertaken by M.P.S.R.T.C. in collaboration with Corporation and it is further clear from Annexure R. I that amount of Rs. 29419=34 has been paid to the petitioner towards the preparation of designs and map of bus stand. Thus, in my opinion, petitioner is not entitled in the instant writ petition for survey, design and preparation of maps with respect to the bus stand and shopping complex thereof. However, petitioner is entitled for the work of survey, preparation of layout plan, structural and architectural designs with respect to Bakshi Khana from Municipal Corporation, Sagar for

which they have to make the estimation of work of such survey and preparation of map and designs and after reasonable charges as may be permissible for limited work done by petitioner. The Municipal Corporation, Sagar is directed to consider the claim of the petitioner and to pay the reasonable amount which may be determined for the work rendered by petitioner. Assessment of work has to be made in reasonable and fair manner and not exorbitantly to the detriment of Corporation. It is made clear that petitioner is not entitled to claim on percentage basis as claimed by him in writ petition.

With the aforesaid observations, writ petition is partly allowed. In the facts and circumstances of the case, Corporation is directed to make assessment for survey, preparation of plan, structural and architectural designs submitted with respect to the Bakshi Khana and to determine the reasonable charges after hearing the petitioner in the light of the observations already made.

This petition was filed in the year 1987. We are already in 2002. Let the amount be determined within three months from today. Costs on parties.