

(2010) 10 KL CK 0171

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 31475 of 2008 (V)

Suresh Babu

APPELLANT

Vs

Block Development Officer, The Executive Engineer, Public
Health, The District Collector and Village Officer

RESPONDENT

Date of Decision : 12-10-2010

Acts Referred:

Citation : (2010) 10 KL CK 0171

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : R.T. Pradeep, for the Appellant; Government Pleader, for the Respondent

Judgement

T.R. Ramachandran Nair, J.—The petitioner is aggrieved by the revenue recovery proceedings initiated as per Exhibit P8, whereby an amount of Rs. 1,83,377/- with interest at 12% is due from 1.2.2007. Mainly it is contended that the proceedings are initiated without any notice to him.

2. The petitioner was the Convener of a beneficiary Committee with whom he was entrusted two works, namely, Kunnathumala Water Supply Scheme and Oottukuzhi Water Supply Scheme. An agreement was entered into between the petitioner and the 1st respondent. The contract amount for the Kunnathumala Water Supply Scheme was Rs. 24,90,000/- and that of the Oottukuzhi Water Supply Scheme Rs. 5,70,000/-. According to the petitioner, he spent Rs. 15 lakhs for doing the works under both the Schemes and received 75% of the amount for the work done. He has averred in paragraph 3 of the Writ Petition that an amount of Rs. 6,75,000/- has been received as advance for the part work done for the Kunnathumala Water Supply Scheme and Rs. 3,50,000/- for the other work.

3. The petitioner's case is that as part of the execution of the work, the respondents were obliged to supply pipes also and because of the failure to supply such materials, ultimately he could not complete the work. Exhibit P2 to

P4 communications have been produced and finally by Exhibit P5, according to him, he rescinded the contract.

4. The petitioner's case appears to be that the balance amount is due to him for the execution of these two works and aggrieved by the revenue recovery proceedings, whereby an amount of Rs. 1,83,377/- is claimed, this Writ Petition has been filed.

5. It is contended that quantification of the amount covered by Exhibit P8 revenue recovery notice was done without notice to him.

6. The counter affidavit filed by the 1st respondent reveals the following facts:

Initially, the petitioner accepted Rs. 1,25,000/- as mobilization advance on 26.2.2001 for the Kunnathumala Water Supply Scheme and an amount of Rs. 1 lakh as mobilization advance on 30.3.2001 for the Oottukuzhy Water Supply Scheme. While accepting the advance amount, a supplementary agreement was signed by the petitioner with the Block Panchayat by which the petitioner once again agreed that he will complete the work as directed by the concerned authority and if there is any lapse on his part, Block Officer can take recovery steps against him. The amounts subsequently paid to him have been detailed in paragraph No. 4 of the counter affidavit. He has received Rs. 6,75,000/- out of the total amount payable for the work of Kunnathumala Water Supply Scheme and Rs. 3,50,000/- for the Oottukuzhi Water Supply Scheme. It is the contention of the petitioner that the purchase of pipes are to be done only after completion of water tank. The petitioner has constructed only the water tank pillars and so the need for purchase of pipes has not arisen. The petitioner stopped the work after accepting the advance payment and even after repeated request by the Block Panchayat to continue the work, there was no response. In April. 2003, the local people informed the Block Panchayat that the Convener had taken back the materials from the work site stating that the rate should be revised. It is also their case that in spite of earnest efforts taken by the Block Panchayat, the petitioner did not turn up for continuing the work. It is evident from paragraph No. 10 of the counter affidavit that valuation of the work was done by including the materials, the Convener had arranged at the site. But, after taking valuation of the materials and accepting money for it, the Convener had taken back all materials to another site(private). It is mentioned in paragraph No. 11 that experts from the Government Department visited the site and took the valuation of the present stage of work. The amount, which is shown in the recovery notice is the money which the Convener had gained by cheating the Government and the public.

7. The learned Counsel for the petitioner submitted that the quantification of the amount shown in Exhibit P8 revenue recovery notice is without any notice to him. It is evident from the counter affidavit that experts of the Government Department visited the site and took the valuation of the present stage of the work and accordingly, the amount was fixed. Various disputes have been arisen

between the parties. The matter is purely in the realm of contract. The disputed questions of facts cannot be adjudicated in a Writ Petition like this. The petitioner's case is that he had executed major part of the work and because of the non-supply of pipes, he could not complete the work. This aspect is disputed by the other side. Therefore, if the petitioner is aggrieved by the revenue recovery proceedings, he will have to challenge it by filing a civil suit before the appropriate civil court.

8. The learned Counsel for the petitioner submitted that various items of properties are under attachment and he is prepared to furnish sufficient security for the amount shown in Exhibit P8 for lifting the attachment. There is nothing to show that he has already moved any of the authorities for lifting the attachment. It is upto him to file appropriate representation before the authority concerned, namely, the District Collector. The remedy of the petitioner, therefore, is to file a civil suit especially in the light of the plea raised by the petitioner that money is due to him also. For enabling the petitioner to approach the civil court, revenue recovery proceedings will be kept in abeyance for a period of two months from today. If the petitioner files appropriate application for lifting the attachment with respect to any of the properties concerned before the 3rd respondent within two weeks from today, the 3rd respondent will consider the same in accordance with law and pass appropriate orders within a further period of one month.

The Writ Petition is accordingly disposed of.