

(2009) 05 KL CK 0029
In the High Court Of Kerala
Case No : R.P. No. 1128 of 2007 (D)

The Secretary

APPELLANT

Vs

Antony Joseph, The Assistant Executive Engineer and The
Assistant Engineer

RESPONDENT

Date of Decision : 05-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (2009) 05 KL CK 0029

Hon'ble Judges : Pius C. Kuriakose, J

Bench : Single Bench

Advocate : V.K. Sunil, for the Appellant; Sunil Cyriac, for the Respondent

Final Decision : Dismissed

Judgement

Pius C. Kuriakose, J.—The first respondent in the writ petition, the Kanjirappally Block Panchayath seeks review of my judgment in the writ petition passed on the 23rd March, 2007. The writ petitioner is the first respondent in the R.P. and second and third respondents are respectively respondents 2 and 3 in the writ petition. The additional 4th respondent in the RP was impleaded subsequently. The writ petitioner is the Convener of the Committee for Constructing Neerkuzhy and Kundoorkayyala, a work granted by the Kerala Rural Development Department, District Rural Development Agency, Kottayam to be done under the SGRY Scheme of Kanjirappally Block Panchayat in its Chenappady Division. The writ petition was filed by him seeking inter alia a writ of mandamus directing the review petitioner Block Panchayat to release the amounts due to the writ petitioner under Ext.P1 agreement. The writ petition was disposed of by me issuing the following directions:

Respondents 2 and 3 will conduct measurements of the work claimed to have been done pursuant to Ext.P1. Measurements will be conducted with notice to the petitioner and also with notice to the concerned beneficiary. Measurements will be recorded after seeking the opinion of the concerned beneficiary also.

Ext.P5 will be taken into account while recording the measurements and necessary crosschecking will be done with Ext.P5. After recording measurements is done the 1st respondent will quantify the amount actually due to the petitioner after giving credit for the rice actually supplied to the petitioner and release payment. The above exercise will be completed by the concerned respondents within three months of receiving a copy of this judgment.

Ext.P5 was, according to the writ petitioner, the statement of the details of the measurements taken by the Agricultural Officer, Erumely regarding the works done by him. As regards Ext.P5 it was contended by the Panchayat that neither the Panchayat nor the writ petitioner have the authority to entrust the task of measurement to an external agency like the Agricultural Officer. This Court however, held under the judgment that version of the writ petitioner regarding Ext.P5 seems to be more probable and accordingly the judgment was passed.

2. The review petitioner submits that after receiving copy of the judgment the Panchayat took all its earnest efforts to comply with the directions of this Court. Respondents 2 and 3 started to take out the measurements with notice to the respondent and the concerned beneficiaries. They recorded the measurement of the work as pointed out by the writ petitioner. Due to adverse weather conditions and outbreak of epidemics the work of recording measurements could not be completed within the specified time. After the measurements were recorded it was compared and crosschecked with Ext.P5. It was then revealed that the works claimed to have done by the respondent is far in excess of the works sanctioned in Ext.P1. It was seen that as against the sanctioned quantity of 3500 sq. mtrs. a total of 10,819.35 sq. mtrs. of Kayyalas were constructed. It was also revealed that majority of the works claimed to have been done were not upon the properties of the beneficiaries selected by the Panchayat. Hence Ext.P5 was subjected to a thorough scrutiny and it was disclosed that it was prepared on 7-5-2003. It is pointed out that the admitted case of the petitioner is that he completed the execution of the work only in June 2003. The review petitioner submits that it means that the Agricultural Officer recorded the measurements at least one month prior to the completion of the work by writ petitioner, which is hardly believable. It is also pointed out that there is a column in Ext.P5 for amount of subsidy claimed. The total amount of subsidy for the Kayyalas was Rs. 3,10,000/- and for Neerkuzhies was Rs. 11,200/-. Since the projects under SGRY SCP were fully financed by the Government there were no subsidies under that project. It is accordingly submitted that Ext.P5 relates to some other work and has no connection with the works mentioned in Ext.P1. The review petitioner also submits that as Convener as per Clause 3 of Ext.P1, the writ petitioner was bound to keep true and correct accounts of all incomes, expenditure of the work for the purchase of materials, hire charge of tools and machineries, wages of labourers with all supporting vouchers and cash bills. After completion of the work in all respects, accounts will be closed within one week and all account books, muster rolls, cash bills and vouchers will be produced before the Panchayat along with an income and expenditure statement. As per Clause 4, all

amounts required for payment for the execution of the work shall be drawn through cheques subject to the decision of the committee. As per Clause 9 final bill shall be paid after verification of the accounts with supporting vouchers produced by the Convener. As per Clause 10, payment will be limited to the actual expenditure incurred by the Convener or within 50% excess over the estimate cost based on the PWD rates of 1996, whichever is less. The petitioner was directed under Annexure -A letter dated 18- 10-2007 to produce muster rolls, receipts and vouchers which he was bound to keep as per the terms of Ext.P1. On 26-10-2007 he submitted Annexure-B letter dated 23-10- 2007 stating that he had submitted all the records in May 2003. Since the admitted case of the respondent is that he completed the work only in June 2003, his case in Annexure-B that he submitted muster roll, vouchers, receipts etc. in May 2003 is highly improbable. Stating the above facts the review petitioner Panchayat seeks review of the judgment.

3. The writ petitioner filed a detailed counter affidavit in the R.P. According to the counter affidavit, after completion of the work allotted to him the writ petitioner approached the Panchayat Secretary for measurement of the work done by him. The Panchayat Secretary only directed the Agricultural Officer, Erumely who was impleaded as the additional 4th respondent, to measure out the work done by him stating that the work comes under the one belonging to the Agricultural Department. The Panchayat is estopped from challenging the validity of Ext.P5. The counter affidavit takes exception to the allegation that upon measurement conducted in compliance with the judgment, it was revealed that the work done is far in excess of the work sanctioned under Ext.P1. It is submitted that as per Exts.P1 and P2 produced in the writ petition and upon the directions issued by the Secretary of the Panchayat, the work was executed. After completion it was found that the petitioner had constructed almost 12000 sq. metres of Kayyalas. It is not clear as to how the review petitioner concludes that the sanctioned quantity is 3500 sq. metres. If the sanction was for construction of 3500 sq. metres of Kayyalas only, the sum of Rs. 3,10,328/- would not have been required. On measurement it was revealed that a total of 10,819.35 sq. metres of Kayyalas were constructed by the writ petitioner. The officer who had conducted measurements had issued letter to the beneficiaries referred to in Ext.P2 and had obtained Annexure -II produced in the contempt petition from those beneficiaries and those beneficiaries vide Annexure II had duly submitted before the Assistant Engineer that the writ petitioner had constructed the Kayyalas for them as stated by them in Annexure II. The review petitioner with political motives and for the reason that the writ petitioner did not pay the bribe demanded by the local politician of the ruling front of the Panchayat is raising frivolous contentions in order to deny the amounts due to the writ petitioner for the work done by him. It is conceded that in the writ petition it is stated that the work was completed in June 2003. It is pointed out that a contractor usually submits that his work is completed only after measurement of the work is done final bill is submitted to the authorities. All the works including Neerkuzhies were

completed by the writ petitioner during the first week of March 2003. Even prior to March 2003, the work of the Kayyalas were over. But the measurement was conducted by the Addiitonal 4th respondent during the month of March 2003 and Ext.P5 report was submitted. Only thereafter final bill was submitted. Writ petitioner does not know why the additional 4th respondent in Ext.P5 stated about the subsidy of the work done. These are not matters of the writ petitioner's concern. The writ petitioner is concerned only with the measurement of the work done by him. All the facts will be borne out by the files relating to the work which is available with the review petitioner. But the review petitioner with the sole intention of playing fraud upon this Court and with mischievous intentions stated before this Court that the file relating to Ext.P1 agreement and award of the work has been lost from the Panchayat cannot be traced out at all. It is pointed out that the contentions now raised will show that the Panchayat is having custody of the files.

4. Referring to the contention of the review petitioner that the Executive Engineer made another inspection of the site and found that no work was done in a satisfactory manner it is submitted that the above inspection was conducted after the writ petition was filed marking Ext.P5 and if the review petitioner was of the opinion that Ext.P5 is not a genuine document then he ought to have taken appropriate action before the appropriate authority against the additional 4th respondent. It is pointed out that no action was taken or initiated against additional 4th respondent only because the measurement leading to Ext.P5 was done by additional 4th respondent upon the direction issued by the review petitioner himself.

5. The additional 4th respondent, the author of Ext.P5 also filed a counter affidavit as directed by me. It is stated therein that the additional 4th respondent was working as the Agricultural Officer at Krishi Bhavan, Erumely during 2002-2006. While so, at the request of the then BDO, Kanjirapally, the then Assistant Director of Agriculture, Kanjirapally instructed to take measurement of the works done by the petitioner. Accordingly she took the measurement through the then Agriculture Assistant Shijumon K.K. And issued Ext.P5 statement. It is submitted that the physical verification was done and measurements were taken by Sri.Shijumon K.K. Agricultural Assistant and the additional 4th respondent verified the entries in the statement and certified the same. It is pointed out that two statements issued by the additional 4th respondent, one pertaining to Kayyala and the other pertaining to Neerkuzhi are produced collectively and marked by the writ petitioner as if they are a single document. It is pointed out that the statement pertaining to the work of Neerkuzhy at page 23 of the writ petition alone was prepared on 7-3-2003. The statement pertaining to the work of Kayyala at pages 17 to 22 were prepared earlier. The additional 4th respondent is not aware under what circumstance the writ petitioner has made an averment that the works in question were completed only in June, 2003. It is further stated in the counter affidavit that the additional 4th respondent and her subordinate staff who prepared Ext.P5 were under the impression that the work

of Neerkuzhi and Kayyala were done under the subsidy scheme for soil conservation work. It was because of this that the statement happened to be prepared in the format in which such statements are prepared for the Component of the Soil Conservation Work (Subsidy) Scheme, which contains a column for recording the eligible subsidy as well. The counter affidavit reiterates that measurements were conducted and Ext.P5 statement was issued under the directions of the then Assistant Director of Agriculture, Kanjirappally. The counter affidavit denies the allegation that no official memorandum or records are kept in the Agriculture Office, Erumely regarding the measurement of the works done pursuant to Ext.P1. It is stated that it is unfortunate that a responsible officer like the review petitioner has made such a false statement before this Court without proper verification of the records kept in the Agriculture Office, Erumely. It is pointed out that page Nos. 22 and 23 of the Movement Register for the period 2002 - 2005 maintained in the Agriculture Office, Erumely contain entries pertaining to the verification and measurement done by Shijumon K.K. For preparation of Ext.P5. The counter affidavit concludes by reiterating that Ext.P5 statements were prepared by the subordinates of the additional 4th respondent and were certified and issued by the additional 4th respondent under instructions from her superior officer.

6. The review petitioner has filed a reply reiterating the grounds raised in the petition and denying the averments in the counter affidavits filed by the writ petitioner and the additional 4th respondent. Annexure - C to Annexure-N documents are also produced along with the reply affidavit.

6. Very extensive submissions were addressed before me by the learned Counsel for the review petitioner Sri. V.K. Sunil and by Sri. Jobi Jose Kondody, learned Counsel for the first respondent in the review petition. I have heard the submissions of Mr. Sunil Cyriac who appeared for the additional a4th respondent. Having regard to the contours of this Court's jurisdiction for reviewing its own orders and judgments, which are well defined by the provisions of Rule 1 of Order 47 and Section 114 of the CPC and are settled by a catena of decisions, I am of the view that even if the review petitioner Panchayat is aggrieved by the judgment its remedy lies not under the jurisdiction for review. No case is made out for invocation of the jurisdiction for review. R.P. will stand dismissed. This judgment however, will not stand in the way of the Panchayat pursuing other remedies if any available to them against the judgment.