

S.Kumar Vs. State of Kerala

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Court : Kerala

Decided On : May-30-2014

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : S.Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFIQUA FRIDAY, THE 30TH DAY OF MAY 2014 9TH JYAISHTA, 1936 WP(C).No. 12817 of 2014 (B) ----- PETITIONER : ----- S.KUMAR, KUMAR SADANAM, MARIYAPURAM P.O, AMRAVILA, THIRUVANANTHAPURAM- 695 127. BY ADV. SRI.AJITH KRISHNAN RESPONDENT(S): ----- 1. STATE OF KERALA, REPRESENTED BY SECRETARY, DEPARTMENT OF ARCHEOLOGY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001 2. THE DIRECTOR, DIRECTORATE OF ARCHEOLOGY, SREE PADAM KOTTARAM, FORT P.O, THIRUVANANTHAPURAM -23 BY GOVERNMENT PLEADER SMT. C.K.SHERIN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/05-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts WP(C).No. 12817 of 2014 (B) ----- APPENDIX PETITIONER(S)' EXHIBITS ----- EXHIBIT P1 TRUE COPY OF THE REPRESENTATION DATED 03/07-2012 SUBMITTED BEFORE 2D RESPONDENT

EXHIBIT P1(A) TRUE COPY OF THE REPRESENTATION DATED 22.10.2012 SUBMITTED BEFORE 2D RESPONDENT EXHIBIT P2 TRUE COPY OF THE SHOW CAUSE NOTICE NO.5807/2010/DA DATED 21.01.2014 ISSUED BY THE 2D RESPONDENT EXHIBIT P3 TRUE COPY OF THE REPLY DATED 05.02.2014 TO THE 2D RESPONDENT. EXHIBIT P4 TRUE COPY OF THE

ORDER

NO.A9(A)-5807/2010/DA DATED 25.04.2014 ISSUED BY THE 2D RESPONDENT EXHIBIT P5 TRUE COPY OF THE REPRESENTATION DATED 02.05.2014 BEFORE THE 2D RESPONDENT RESPONDENT(S)' EXHIBITS: NIL /TRUE COPY/ P.S.TO.JUDGE sts A.M. Shaffique, J.

===== W.P(C) No. 12817 of 2014 =====
===== Dated this, the 30th day of May, 2014. =====

JUDGMENT

Petitioner has approached this Court seeking for a direction to the 2nd respondent to return security deposit of Rs. 1 lakh, which is given in the form of National Savings Certificate and to quash Ext. P4.

2. Ext. P4 is an order issued by the 2nd respondent cancelling the contract awarded to the petitioner and informing him that the security deposit shall be forfeited.

3. Petitioner submitted Ext. P5 representation stating the reasons for failure to carry out the work. He has also requested for refund of the security deposit.

4. It is not in dispute that an agreement has been entered into between the 2nd respondent and the petitioner for carrying out certain item of work for the Archaeological Department. According to the petitioner, since the work front was not handed over, he was unable to commence the work and therefore he is not responsible for not starting the work.

5. A perusal of Ext. P2 would indicate that notice had been issued by the 2nd respondent on 21.1.2014 calling upon the petitioner to show cause why the

contract should not be cancelled. The agreement was, in fact, executed as early as on 16.8.2011 with a completion period of three months. W.P(C) No. 12817 of 2014 :-

2. :- months. This clearly indicates that despite the inaction on the part of the petitioner, substantial time has been granted by the 2nd respondent to carry on with the work. Still, the petitioner was not inclined to carry out the work. He had stated certain reasons for not performing his part of the contract.

6. The learned Government Pleader, on instructions, would submit that the contract has to be cancelled as the petitioner did not carry out the work within the stipulated time and despite the fact that there was delay, still if the petitioner is willing to carry out the work, the respondent authority shall consider his request afresh. However, the learned counsel for the petitioner would submit that unless a higher rate is granted, it may not be possible for him to proceed with the work.

7. In the above circumstances, it is clear that there is substantial dispute between the parties with reference to the contract between them. The question to be decided would be whether the petitioner has committed any breach of contract or is it on account of not granting the work front by the 2nd respondent Forfeiture of security deposit is in terms with the contract on an alleged breach of contract committed by the petitioner. Such issues cannot be decided under W.P(C) No. 12817 of 2014 :-

3. :- Article 226 of the Constitution of India and therefore the petitioner will have to approach the civil court for appropriate remedy. In the above circumstances, the writ petition is dismissed, reserving right of the petitioner to adjudicate his claim before a proper civil court. Sd/- A.M. Shaffique, Judge. Tds/

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