

Madhusoodanan vs the Executive Engineer

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Court : Kerala

Decided On : Dec-01-2023

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : WP(C)/33875/2015

Appellant : Madhusoodanan

Respondent : The Executive Engineer

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL FRIDAY, THE 1ST DAY OF DECEMBER 2023 / 10TH AGRAHAYANA, 1945 WP(C) NO. 33875 OF 2015 PETITIONER: MADHUSOODANAN AGED 55 YEARS S/O.VASUDEVAN, PWD CONTRACTOR, VASUDEVA BHAVAN, EZHUKONE, KOTTARAKKARA (VIA), PIN - 691 505. BY ADV SRI.M.K.CHANDRA MOHANDAS RESPONDENT: THE EXECUTIVE ENGINEER OFFICE OF THE EXECUTIVE ENGINEER, KALLADA IRRIGATION PROJECT (LB), DIVISION NO.V, KOLLAM - 691 001.

BY ADVS. SRI.ARUN AJAY SHANKAR, GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.12.2023, THE COURT ON THE SAME DAY DELIVERED THE

JUDGMENT

1. Recovery proceeding Ext.P1 has been initiated

against the petitioner on the ground that the petitioner had agreed to return eight(8) number of Girders taken from the shed near Panayil temple or the value thereon and by a particular day the work would be completed, failing which to be reported to the police station or pay the value thereof. Though the said agreement Ext.P4 was never signed by the petitioner, on the basis of the same, recovery proceedings Ext.P1 has been initiated. The translation of Exts.P1 and P4 reads as under: Ext.P1

ORDER NO. E.B 4-590/13(A) DATED 12.10.2015.

In connection with the K.I.P.(R.B.C) covering Chainage 0M to 3013 meters in Pallikkal Distributory and connected C.D. Works, the Contractor Sir. Madhusudanan, unauthorizedly collected materials, which are more than the estimated / actual quantum of materials from the Site Storage, namely the items - Cement - 792 packet; Steel - 14773.11 kilo; R.S. Gerder - 8 nos

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(3536 kilo); Empty Bags 316 numbers). In this regard, a complaint was filed by the Department before the Nooranadu Police Station, based on which the said Contractor along with his Advocate appeared before the Sub Inspector, Nooranadu Police Station and assured that the contractor would return the entire materials unauthorizedly taken by him to the Site Store, failing which he would pay Rs. 2,98,057/- being the value of the materials (Rupees two lakh ninety eight thousand fifty seven only), which he undertook in writing before the Police Sub Inspector in the presence of his Advocate. However, neither has he returned the materials nor has

he paid the value to the Government as promised by him. Accordingly, it was ordered by the Executive Engineer, K.I.P (R.B) Division vide his order No. A5/2429/85 dated 05.07.88 that Rs 45,760/- (Rupees forty five thousand seven hundred sixty) and vide the Order No K.C.W.1798/84 dated 17.06.85 ordered to deduct Rs. 30,500/- (Rupees thirty thousand five hundred) be deducted from his Bank from his Bank Guarantee and the balance amount of Rs. 39,000/- be adjusted with his last Bill. Thus, a total sum of Rs.1,15,170/- has been recovered from him. The still outstanding amount of Rs. 1,82,887, and the interest thereon @ 12% with effect from 28.06.88 amounting to Rs.

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5,48,029/-, thus totaling to Rs.7,80,916/-(Rupees seven lakh eighty thousand nine hundred sixteen) is required to be recovered from the said Contractor, and it is ordered accordingly. The contractor is required to pay the said sum within 30 days from the date of this Order and he should produce the receipt therefor to this Office, failing which, appropriate legal proceeding will be initiated against the contractor including revenue recovery proceedings

Ext.P4 AGREEMENT made by Vasudevan Madhusudanan, residing at Vasudeva Bhavanam, Ezhukone Muri and Village against Complaint filed by KIP Assistant Executive Engineer at the Nooranadu Police Station.

1. It is agreed that I will return the Girders (8 nos) which I have taken from the Shed near Panayil Temple, within 20.5.88, to the Engineer, or else, I will pay the value of same to the Government.

2. I hereby agree that within 5.5.1988 the work

will be completed, failing which I will report the same to the Police Station and to the other concerned persons. If I am not able to complete the work, I will return the cement and steel rods WP(C) NO. 33875 OF 2015 -5- to the Engineer, or else, I will pay the value thereof to the Department under intimation to the Engineer. The

decision taken in consultation with the Engineer will be informed to the Police Station within 5.5.88.

2. On looking at the vernacular copy of Ext.P4 there

is no signature of the petitioner. In this view of the matter, I am of the view that Ext.P1 revenue recovery proceedings in the absence of any undertaking given by the petitioner cannot be initiated. The department would be at liberty to take action in accordance with law but not in the manner and mode. Ext.P1 is quashed. Writ petition stands allowed. Sd/- AMIT RAWAL JUDGE vv WP(C) NO. 33875 OF 2015 -6- APPENDIX OF WP(C) 33875/2015 PETITIONER EXHIBITS EXHIBIT P1 A COPY OF THE ORDER NO.EB IV-590/13(A) DATED 12.10.2015 EXHIBIT P2 A COPY OF THE LETTER 21.10.2015 EXHIBIT P3 A COPY OF THE APPLICATION DATED 21.10.2015 EXHIBIT P4 A COPY OF THE STATEMENT STATED TO BE GIVEN BEFORE THE POLICE, BY THE PETITIONER EXHIBIT P5 A COPY OF THE STATEMENT SHOWING THE COST OF DEPARTMENTAL MATERIALS EXHIBIT P6 TRUE COPY OF THE REPLY FURNISHED TO

THE PETITIONER VIDE NO.E5 3406/2016 DATED 14.01.2016 ALONG WITH 3 PAGES OF THE AGREEMENT DATED 04.11.1985 EXHIBIT P7 TRUE COPY OF THE LETTER NO.A 1-1896/15 DATED 12.11.2015 EXHIBIT P8 TRUE COPY OF THE CHEQUE NO.555460 DATED 01.12.2015 DRAWN ON CORPORATION BANK IN FAVOUR OF THE RESPONDENT

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