

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

CA INJ 08/2016

01. T.M.A. Priyadharshana Bandara.

02. Herath Mudhiyanselage Achala Weerasuriya.

Both of
Asanka Construction
No. 04, Buddhagaya Mawatha,
Anuradhapura .

Petitioners

-Vs-

01. H.B. Siriyalatha
Secretary,
Nochchiyagama Pradeshaya Sabha,
Nochchiyagama .

02. Nochchiyagama Pradeshaya Sabha
Nochchiyagama.

Respondents

C.A. INJUNCTION 08/2016,

BEFORE : VIJITH K.MALALGODA PC J (P/CA) &
S. THURAIRAJA, PC J.

COUNSEL : Dr. Mahinda Ralapanawa with Nisansala
Fernando for the Petitioner.

DECIDED ON: 15.12.2016

VIJITH K. MALALGODA PC J (P/CA)

The Petitioner to this application has come before this court under Article 143 of the Constitution seeking an injunction to prevent the 1st and 2nd Respondents granting a contract to a 3rd party until the appointment of an adjudicator under the contract between the Petitioners and the Respondents. However when going through the papers before us, we observe that the impugned document before this Court which is produced marked P1 had been issued by the Secretary to Nochchiyagama Pradeshiya Sabha terminating the contract between the Petitioners and the Respondents Pradeshiya Sabha after expiration of agreement between the two parties. As revealed before us the Petitioners have failed to complete the work as agreed by the agreement between the parties and therefore the 2nd Respondent had correctly terminated the contract. Even though the Petitioner relied upon a document produced marked X1 said to have written by the Project Engineer granting the Petitioner's time till 20.10.2016 to explain as to why the work was not completed, ^{we} ~~We~~ observe that the said date given by X1 is a date three dates after the expiration of

the contract. The Petitioners have produced marked X2 an explanation given by the Petitioners to X1 but as observed by this Court the Petitioners have not taken any steps either to complain of delays in completing the contract or requesting additional time to complete the contract without explaining the reasons for the delay while the agreement was in operation. The Petitioners are now totally depend on documents X1 and X2 to explain their delay. However at the time the explanation was given the contract had already been expired and therefore there was no reason for the 2nd Respondent to adhere to the terms of the contract. In the said circumstances, it is our view that this contract had been expired and since the Petitioners could not complete the work within the specified period the 2nd Respondent had reasons to terminate the said contract. In the said circumstances, a necessity of adjudication will not arise and therefore we see no reason to issue an injunction preventing the 2nd Respondent from taking further action prior to adjudication. This application is therefore dismissed. No cost is ordered.

PRESIDENT OF THE COURT OF APPEAL.

S. THURAIRAJA PC J.

I agree.

JUDGE OF THE COURT OF APPEAL.

Vkg/-