

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 18/11/2014

DATED: 05/10/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.25065 of 2014 &
M.P.Nos.1 and 2 of 2014

K.Raja,
S/o.Karumalai,
Proprietor,
M/s.Venkateswara Saw Mill,
12.A, Main Road,Nainarpalayam,
Villupuram District.

...Petitioner

Vs.

1.The District Forest Officer,
Villupuram Forest Division,
Villupuram.

2.The Forest Range Officer,
Ulundurpet Range,
Ulundurpet, Villupuram District.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records pertaining to the impugned order dated 17.05.2014 passed by the second respondent and quash the same and pass appropriate orders on the same within a stipulated time.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.M.K.Subramanian
Special Government Pleader (Forest)

O R D E R

The petitioner submits that he is running a Saw Mill in the name of Venkateswara Saw Mill for more than 25 years. The respondents herein granted permission and license to run the Saw Mill and the same is renewed periodically. From the date of granting license, the petitioner is purchasing the timbers from the dealers, sellers and wholesalers with valid

bills for processing. It is usual to keep unprocessed round timber which was purchased through valid bills in the yard along with sawn timber and waste wood. From the date of granting license the petitioner herein is running the Saw Mill as per the terms and conditions as stipulated in the license. The petitioner further submits that while so some of the persons including son-in-law to the petitioner viz., Ponnuvel are alleged to have cut the trees existing at the Forest land located at Chinnasalem to Nainarpalayam Road and on coming to know about the said information, the second respondent on inspection, is alleged to have found two persons cutting the trees existing at the forest and two others were accompanying along with them to load the woods in a TATA Ace vehicle. At that juncture, the second respondent herein had arrested two persons and registered a complaint in STOR No.3 of 2014 under Section 21(b) & (c), 35(b), 36 r/w 56(a), (b), (c), (d) of Tamil Nadu Forest Act 1882 and Rule 10 of Timber Transmit Act against the petitioner herein and others. The petitioner further submits that the second respondent herein falsely implicated the petitioner herein by stating that the petitioner herein induced the other accused to commit the said occurrence. Under such circumstances, the petitioner herein filed a petition for anticipatory bail before this Court in CrI.O.P.No.12731 of 2014 and the same was granted by order dated 16.05.2014.

2. The petitioner further submits that in the petition for anticipatory bail, the second respondent herein also did not give any explanation about the role of the petitioner in the above said occurrence. Under those circumstances only, this Court has granted anticipatory bail to the petitioner. Moreover, being father-in-law to the A4 in the above case, the petitioner herein was implicated as accused. Under such circumstances, the second respondent in his proceedings dated 13.04.2014 issued a letter by calling for explanation from the petitioner herein about the details regarding stocks regarding timbers existing at the premises of the petitioner's saw mill. Further, the second respondent herein in the said letter directed the petitioner herein to submit his explanation along with the bills and invoices about the timbers which exists at the premises of the saw mill on or before 16.05.2014. The petitioner further submits that after receipt of the said notice, the petitioner herein submitted copies of the bill and invoices for the stock timbers before the second respondent through advocates and the petitioner's representatives. After receipt of the bills and invoices, the second respondent herein asked the presence of the petitioner herein before the second respondent on 16.05.2014 and as such, the petitioner also represented along with his representatives. The second respondent herein recorded the explanation of the petitioner and received the xerox copies of the entire documents and bills after comparing the same with

the original. Subsequent to that the second respondent on 16.05.2014 reported that they will take appropriate steps on the statements made before the second respondent.

3. The petitioner further submits that on 17.02.2014, the second respondent without considering the statements and bills submitted before them, issued the impugned order by closing the saw mill by stating that despite notice to submit the records with respect of the stock records, the petitioner has not tendered the same to the respondents herein. The petitioner further submits that subsequent to the order passed by the second respondent, the petitioner herein made several representations along with bills and vouchers with regards to purchase and sale of the timbers, but the respondents herein, so far for more than four months, did not consider the same and thereby the petitioner is not able to run the saw mill. The petitioner further submits that so far, he is not able to understand why the respondent is keeping the saw mill belonging to the petitioner under lock and seal. The petitioner herein also made so many representations requesting the respondent to consider bills and vouchers and review the order dated 17.05.2014, but the respondents herein did not consider the same. Hence, the petitioner has filed the above writ petition.

4. The second respondent has filed a counter affidavit and resisted the above writ petition. The second respondent submits that the petitioner was granted license under the Tamil Nadu Wood Based Industries Rules, 2010 on 29.08.2011 to run saw mill in the name of Vengateswara Saw Mill. The license holder should abide by the terms and conditions stipulated from time to time. The second respondent further submits that on 04.05.2014, forest officials received information about some illegal wood cutting activities being carried on in the Red Sanders Plantation in Thottapadi RF of Ulundurpet Range area. On receipt of information, team of their officials inspected the spot. On seeing the officials of the Forest Department, the persons who were present there in the Forest Area fled the spot and only two persons viz., Shankar and Madeshwaran have been arrested by their team in the place of occurrence. The second respondent further submits that on inspection of the site, it was found that the above two and others who fled from the spot were involved in the process of cutting red sander.

5. The second respondent further submits that immediately the above named persons were arrested by their team and on preliminary enquiry they confessed the names of those who were present and aided in cutting trees. As per the confession of the above persons, 1) Ponnuvel, 2) Suresh and 3) Duraisamy are the persons who ran away on seeing the Forest Officials. The second respondent further

submits that on further enquiry, it was revealed that the said Ponnuvel is running an unauthorized saw mill in the name and style of Sachin Saw Mill at Nainarpalayam Village under the shadow of the above petitioner who is having valid license to run saw mill and they are involved in the process of illicit felling of trees. The second respondent further submits that confession statements recorded from the arrested persons revealed the role played by the above petitioner in the illicit felling of the red sander. The arrested persons told that they have acted under directions of the Ponnuvel and his father in law i.e., the above petitioner Raja. On collection of all details, the accused were booked under the Forest Offence in S.T.OR.No.3 of 2014, on 05.05.2014 under Sections 21 d,e 35(b), 36 r/w 56(a), (b), (c) and (d) of Tamil Nadu Forest Act, 1882 and Rule 10 of Timber Transit Rule and remanded to judicial custody. All materials seized from the place of occurrence along with the vehicle used for transportation and transit of timbers were submitted before the learned Judicial Magistrate No.1, Kallakurichi and the properties seized by them handed over to the DFO, Villupuram.

6. The second respondent further submits that based on the confession statements made by the accused, while on search of the absconding accused Ponnuvel, it was found that the said Ponnuvel used the petitioner's saw mill as a cover for his illicit timber business. The second respondent further submits that major haul of finished teak wood was recovered from the saw mill of petitioner, which was running without maintaining proper records of the seized goods. The second respondent further submits that the similar inspection was conducted in the saw mill of the petitioner. As the petitioner was not present during inspection, show cause notice was affixed in his saw mill directing him to produce all material records pertaining to the stock available in his saw mill on or before 16.05.2014. The second respondent further submits that the petitioner is well aware of the fact that the non-compliance of the same would result in severe action against him, yet he failed to respond to the show cause notice. The second respondent further submits that as the petitioner failed to produce his records before the respondent, the order impugned in the writ petition was passed to close and seal the premises of the saw mill. The second respondent further submits that the above order passed on 17.05.2014 is legally valid in law and the same is not liable to be set-aside. The second respondent further submits that the petitioner had failed to exhaust the alternative remedy which is available to him. The second respondent further submits that the petitioner is entitled to file an appeal against the impugned order dated 17.05.2014 to the Appellate Authority and without filing the appeal before the Appellate Authority, he knocks the doors of this Court. Hence, the above writ petition is liable to be dismissed.

7. The second respondent further submits that the arrested accused in STOR.No.3 of 2014 pin pointed that the petitioner herein encouraged the accused to abide by the directions issued by the son-in-law of the petitioner, an absconding accused in the above offence and hence, was included in the offence and the petitioner was not falsely implicated. The second respondent further submits that the petitioner has been granted anticipatory bail by this Court vide order dated 16.05.2014 in CrI.O.P.No.12731 of 2014. The second respondent further submits that it is pertinent to note that the petitioner herein was issued with the show cause notice only to produce his records to check his involvement in the offence committed, but he has purposely and wantonly evaded his appearance before the respondent to show cause and hence, the order dated 17.05.2014 was issued. The second respondent further submits that the petitioner herein never appeared with his records and offered no explanation to the show cause notice dated 09.05.2014 and the petitioner is put to strict proof of the same. The second respondent further submits that the petitioner has not pleaded any reasons for non-appearance before the respondent with material records in respect of the show cause notice dated 09.05.2014 and hence, his representation was not considered. Hence, the second respondent entreats the Court to dismiss the above writ petition.

8. The highly competent counsel Mr.R.Nalliyappan appearing for the petitioner submits that the petitioner is running a Saw Mill in the name and style of Venkateswara Saw Mill for more than 25 years, after obtaining license from the respondents herein and the same has been renewed periodically. The petitioner used to purchase raw materials i.e., unprocessed timber from the dealers, sellers and wholesale merchants. The saw mill is being run as per the terms and conditions as narrated in the license. The highly competent counsel further submits that the petitioner's son-in-law and others are alleged to have cut the trees standing at the forest land, when the second respondent noted the same and arrested two persons and registered a case against them. In the said case, the petitioner has been falsely implicated as co-accused. Further, the petitioner had obtained anticipatory bail before this Court. Under the circumstances, the petitioner had received notice from the second respondent which reveals that the petitioner's saw mill had been sealed from 17.05.2014.

9. The highly competent counsel appearing for the petitioner further submits that before conducting a comprehensive enquiry, the second respondent had passed final order and put up a seal to the saw mill. However, the

petitioner and his counsel have submitted relevant records to the second respondent as required by him. Hence, the highly competent counsel entreats the Court to set-aside the impugned order passed by the second respondent.

10. The highly competent Special Government Pleader (Forest) Mr.M.K.Subramanian appearing for the respondents submits that the petitioner was granted license under the Tamil Nadu Wood Based Industries Rules to run the said saw mill. The respondents have received information that the petitioner is cutting of Red Sanders Plantation at the Ulundurpet Forest Range area. Hence, the Forest Officials inspected the spot and arrested two persons and others fled from the spot. Thereafter, confessional statements have been obtained from the arrested persons. One of the arrested persons, viz., Ponnuvel is running an unauthorized saw mill in the name and style of Sachin Saw Mill at Nainarpalayam. The highly competent counsel further submits that before passing final order, the respondent had issued preliminary notice to the petitioner. After receipt of the said notice, the petitioner did not appear before the second respondent. Hence, the final order has been passed, which is fit to be operated upon further.

11. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers, it is seen that the petitioner has made representation to the first respondent after passing of the impugned order by the second respondent and the said representation is pending on the file of the first respondent, on the same issue. Hence, this Court directs the first respondent to dispose the said representation dated nil within a period of four weeks from the date of receipt of a copy of this order, after giving prior notice to the petitioner, on merits. Accordingly, the above writ petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

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SUB-ASSISTANT REGISTRAR

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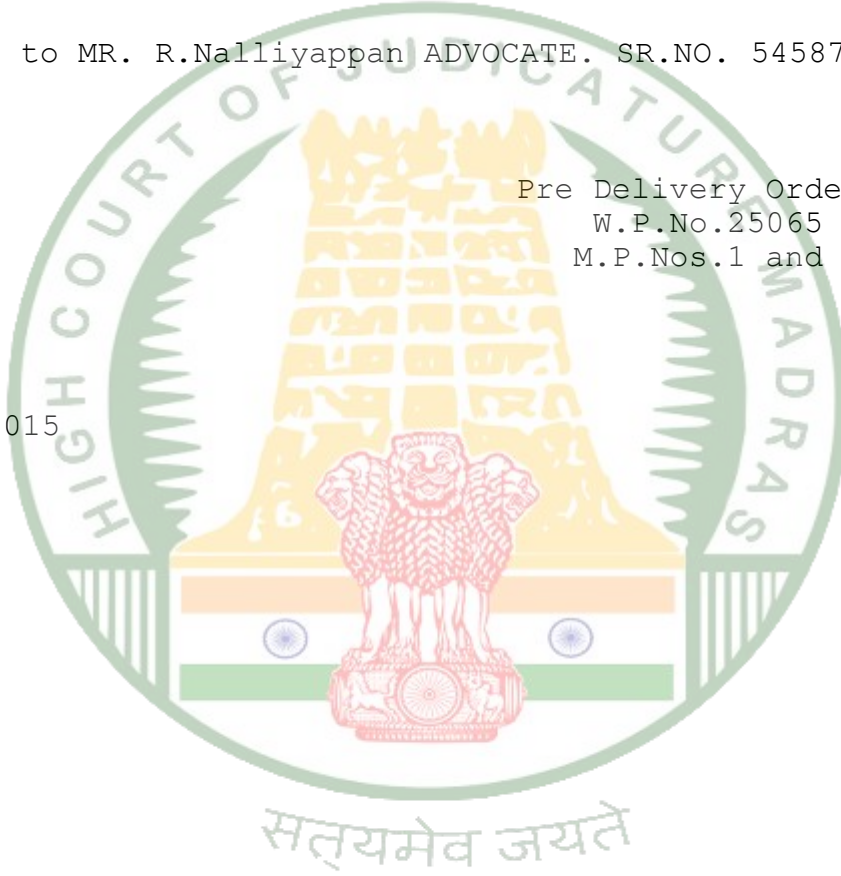
To

- 1.The District Forest Officer,
Villupuram Forest Division,
Villupuram.
- 2.The Forest Range Officer,
Ulundurpet Range,
Ulundurpet, Villupuram District.

+1 CC to MR. R.Nalliyappan ADVOCATE. SR.NO. 54587

Pre Delivery Order made in
W.P.No.25065 of 2014 &
M.P.Nos.1 and 2 of 2014

CO-KSJ
JD 15/10/2015



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