*** The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

<u>+ Writ Petition No.5352 of 2009</u>

<u>% Dated 01.10.2015</u>

Between:

Mr.Puvvada Venkata Krishna Rao

… Petitioner

and

The Collector & District Magistrate

Guntur District and 2 others

…Respondents

! Counsel for the petitioner: Mr.Vedula Srinivas

^ Counsel for respondents 1 & 2: GP for Civil Supplies (AP)

^ Counsel for respondent No.3: None Appeared

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? Cases cited:

NIL

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Counsel for respondents 1 & 2: GP for Civil Supplies (AP)

Counsel for respondent No.3: None Appeared

The Court made the following:

<u>Order :</u>

This Writ Petition is filed for a Mandamus to set aside the Order in Essential Commodities Act Case No.151/2007-S7, dated 11-02-2009, of respondent No.1, whereby he has directed the petitioner, who was the custodian of the seized and confiscated stocks, to pay the value of the same by 26.02.2009.

Respondent No.3 is a trader in pulses. His premises was inspected by the Deputy Tahsildar along with the Sub Inspector of Police, Vigilance and Enforcement Department, Vinukonda, Guntur, and the Agricultural Officer, Office of the Vigilance and Enforcement Department, Guntur, on 17-02-2007. As certain variations in the stocks were, allegedly, found, the Civil Supplies Deputy Tahsildar, Vinukonda, while sending a report under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act'), seized the stocks and entrusted the same to the petitioner to be kept under his custody. In the proceedings under Section 6-A of the Act, the only charge framed against respondent No.3 was that he has stored 7714.20 quintals of pulses in his business premises as against the limit of 1000 quintals prescribed by the Government and thus, he has violated the instructions of the Government issued *vide* Memo No.1519/CS.I (1)/2006, dated 18.12.2006, and Clause 11 (ii) of the Andhra Pradesh Scheduled Commodities Dealers (Licensing and Distribution) Order, 1982. Eventually, after enquiry, the proceedings under Section 6-A of the Act were concluded by respondent No.1 *vide* Order, dated 11.02.2009. In the said order, instead of dealing with the alleged violation committed by respondent No.3, respondent No.1 has mainly concentrated on the alleged collusion of the petitioner with respondent No.3 and allowing the latter to remove the seized stocks from his custody and sell away the same. Respondent No.1, while expressing the view that such an act amounts to theft of the seized stocks by respondent No.3 in collusion with the petitioner, held that the petitioner has sold the stocks in collusion with respondent No.3 and that, therefore, he should pay the total value of the seized stocks by 26.02.2009. Respondent No.1 has also directed the Tahsildar, Vinukonda, to collect the total value of the seized stocks existing as on the date of seizure from the petitioner and remit the same into Civil Supplies Head of Account *i.e.,* "1456-Civil Supplies, 800-Other Receipts, 81-Other items" and that if the custodian does not pay the value of the seized stocks, its entire value shall be recovered from him under the Andhra Pradesh Revenue Recovery Act, 1864 (for short 'the 1864 Act').

Mr.Vedula Srinivas, learned Counsel for the petitioner, submitted that under Section 6-A of the Act, the jurisdiction of respondent No.1 is confined to confiscating the seized essential commodities, along with any package, covering or receptacle in which such an essential commodity is found, and any animal, vehicle, vessel or other conveyance used in carrying such essential commodity, if he finds that, in respect of such an essential commodity, contravention of any of the Control Orders is proved. He has further submitted that neither under this provision nor under any other provision of the Act or Control Orders made thereunder, respondent No.1 has the jurisdiction to order recovery of the value of the stocks entrusted to a custodian such as the petitioner.

The learned Government Pleader for Civil Supplies (AP), while strongly trying to persuade this Court not to interfere with the impugned order of respondent No.1, has, however not brought to the notice of this Court any provision under which respondent No.1 can direct payment of the value of the seized stocks entrusted to a custodian. She has, however, submitted that under the 1864 Act, such a course is permissible.

As noted herein before, the direction to recover the value of the seized stocks was made by respondent No.1 while exercising his jurisdiction under Section 6-A of the Act. Undisputedly, no notice was issued to the petitioner either in connection with the proceedings under Section 6-A of the Act or under the provisions of the 1864 Act. Therefore, the direction issued by respondent No.1 under the impugned order is not traceable to his jurisdiction exercised under Section 6-A of the Act. From the clear and unambiguous language of Section 6-A of the Act, there cannot be any doubt that the impugned direction issued by respondent No.1 is not traceable to his jurisdiction exercised under that provision. If, in the opinion of respondent No.1, the petitioner is responsible for the alleged misuse/misappropriation of the stocks entrusted to him, unless appropriate legal proceeding is initiated and his liability is determined after due notice and an opportunity of being heard given to him by the competent authority, no order saddling the liability on him can be passed.

As regards the submission of the learned Government Pleader that respondent No.1 has the power and authority to pass an order under the 1864 Act, this Court refrains from expressing any opinion, as such a question does not arise in this case. However, respondent No.1 shall be free to issue notice to the petitioner inviting explanation for the proposed recovery and in such an event, the petitioner shall be free to raise all legally permissible pleas including the jurisdiction of respondent No.1 to initiate such proceedings. On receipt of such explanation, if any, respondent No.1 may take a decision as to his own jurisdiction and pass appropriate orders.

Subject to the liberty given to respondent No.1 as above, the Writ Petition is allowed in part and the Order in Essential Commodities Act Case No.151/2007-S7, dated 11-02-2009, of respondent No.1, which is impugned in this Writ Petition, is set aside only to the extent of the direction to recover the value of the seized stocks from the petitioner.

As a sequel, miscellaneous petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 1st October, 2015

Note:

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