

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18 / 10 / 2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.No.290 of 2006

P.P.Mathew
Matts' Orchids,
33/20, MIG, Pavendar Salai,
NH,1, Maraimalai Nagar,
Kancheepuram District ... Plaintiff

Versus

Mahendra World City Developers
Limited, having its Registered Office
At Arjay Apex Centre,
No.24, College Road,
Chennai 600 006 ... Defendant

PRAYER: Plaint filed under Order VII Rule 1 of C.P.C read with Order IV Rule 1 of O.S. Rules praying to grant a judgment and decree in favour of the plaintiff

a) directing the defendant to pay the plaintiff a sum of Rs.30,00,000/- together with interest @ 24% from the date of plaint towards the damages caused to the plaintiff; and
(b) directing the defendant to pay the plaintiff the costs of the suit.

For Plaintiff : Mr.A.R.L.Sundaresan, Senior Counsel
for Ms.A.L.Ganthimathi

For Defendant : Mr.R.Bharathkumar

J U D G M E N T

The suit is filed for recovery of a sum of Rs.30,00,000/- (Rupees thirty lakhs only) together with interest @ 24% p.a. from the date of plaint towards the damages being the tortuous liability for the wrong caused by the defendant.

2. The plaintiff is the proprietor of Matts' Orchids and carrying on business in Orchid Flowers and exporting the same.

3. It is stated that the Central Bank of India, Coimbatore, had sanctioned a loan to one M/s.Blossoms Bio-Tech Limited, Chennai. As there was a default, the notified movables of the said Company was brought in auction. In the said auction, the movables (i.e) plants, flowers, machineries and other accessories of M/s.Blossoms Bio-Tech Limited were brought for sale. Pursuant to the tender on 28.01.2003, the plaintiff decided to purchase the movables. The plaintiff was declared as the highest bidder and the entire payment was made by him.

4. Later, the debtor preferred an appeal before the Debts Recovery Appellate Tribunal, which was also dismissed on 10.09.2003 with a direction to the Receiver to handover possession to the plaintiff immediately. Thereafter, it is

stated that the borrower had filed W.P.No.26652 of 2003 and obtained a conditional stay, which was not complied with and moved the Hon'ble Supreme Court. As the Hon'ble Supreme Court had also dismissed the claim of the borrower, the learned Receiver was directed to deliver possession of movables to the plaintiff on 25.03.2004. As the subject matter of sale, namely, the Orchid plants and potted plants can be grown only in a controlled ambiance and in a green house, the plaintiff had identified a land to shift the plants. The possession of the plants could not be taken by the plaintiff for more than seven months. Therefore, the alternate site chosen by the plaintiff could not be made use of.

5. In such circumstances, the plaintiff filed an application before the Debts Recovery Appellate Tribunal, seeking an extension of time for a period of six months to remove the plants, which was allowed on 29.10.2004 and the plaintiff was directed to remove the plants within four months. The sale certificate was issued on 13.09.2005 and again four months time was granted for removal of movables. The plaintiff also had filed W.P.No.11829 of 2005, which was dismissed on 21.09.2005. On 14.11.2005, the Debts Recovery Appellate Tribunal, Coimbatore, had granted five months time

from 14.11.2005 to remove the entire movables, namely, potted plants and other accessories which had already been handed over by the learned Receiver to the plaintiff. Not satisfied with that, another Writ Petition No.41407 of 2005, seeking an extension of fifteen months' time to shift the plants was filed by the plaintiff. In the said Writ Petition, the defendant was a party.

6. The Government of Tamilnadu, with the object of achieving greater economic development, conceived an idea of establishing an industrial park, in an area of about 1398.23 acres, on the East of the National Highway 45, near Chengalpet, Kancheepuram District. Pursuant to the proposal, land acquisition proceedings were initiated and an award was passed on 30.12.2000 and the entire award amounts were also deposited. At that stage, one Mr.S.Harshavardhan, the owner of an extent of 6.7 acres in Block No.2, Veerapuram Village, filed W.P.No.13247 of 2001 to quash the land acquisition proceedings, which was dismissed on 04.06.2002. An appeal against the same was preferred in W.A.No.2018 of 2002, which also came to be dismissed. In view of the pendency of the Writ Appeal, challenging the acquisition proceedings, the defendant has not handed over the possession of the acquired land. There were further

proceedings before the Debts Recovery Appellate Tribunal as well as before this Court, in which, the plaintiff was granted time till 14.02.2006 to shift the plants from the lands acquired.

7. From the above proceedings, it is evident that the plaintiff had been in possession of the Orchid Plants and was providing good maintenance. It is stated that there was a well defined drainage running around the farm land, as shown in the sketch, which would carry the rain water flow from the farm land and thereby avoid any inundation or damage to the plants during rainy season.

8. While so, during October 2005, there was heavy flow of water around the farm area due to heavy rains. As the defendant had laid a high raised mud road on the Southern side of the plaintiff's farm, completely blocking the drain water, there was stagnation in the plaintiff's farm. According to the plaintiff, this had happened only due to the sudden laying of mud road on the Eastern area of the farm, which was in possession of the defendant herein, pursuant to the acquisition. Due to blockage and stagnation of water, about 7000 small and big orchid plants in the plaintiff's farm were totally affected and damages and the loss caused to the plaintiff was estimated at Rs.3 lakhs.

In fact, the plaintiff claims to have objected to the mud laying by the defendant. Hence, it is alleged that the act of the defendant was deliberate, which had resulted in heavy loss to the plaintiff. The plaintiff also seems to have issued notice to the defendant and also to the District Revenue Officer, Kancheepuram, claiming compensation for damages caused by the defendant.

9. It is also stated that the plaintiff-firm themselves at their own expenses cut the mud road, which was crossing and blocking the drainage facilities and laid pipelines in the land on 16.11.2005 and restored the drainage facilities. Only after the same, the water which was stagnated in the plaintiff's farm, is drained. However, before the water could be drained, the plaintiff had incurred a loss about Rs.30 lakhs as the plants in the farm perished. The plaintiff attributes that the loss was caused only due to the malafide intention of the defendant, which caused purposely and deliberately. It is further stated by the plaintiff that an enquiry was conducted in this regard by the District Collector, Kancheepuram and the report dated 15.11.2005 was sent. The plaintiff further submitted that the report itself clearly shows that the blockage of drainage and stagnation of water was only due to the

formation of the mud road by the defendant, which had caused heavy damage to the plaintiff. Hence, the suit has been filed for recovery of damages at Rs.30 lakhs.

10. The defendant denying the reasons stated in support of the cause of action in the written statement contended that the plaintiff has not come with clean hands and the plaintiff is guilty of *Suppressio Veri* and *Suggestio falsi*. The defendant, who is an associate Sector Company of the Tamilnadu Industrial Development Corporation Limited, is the Government of Tamilnadu Enterprise. The lands were acquired by the Government of Tamilnadu for achieving greater economic development with the cooperation of the promoters of the defendant Company and conceived the idea to establish an industrial park of international standard. After the acquisition (Section 6 declaration), an award came to be passed on 30.12.2000. The defendant Company had deposited the entire award amount in the Government Treasury. The defendant states that the land owner had challenged the Land Acquisition Proceedings in Writ Petition No.13247 of 2001, which was dismissed and confirmed in appeal. After several litigations, challenging the various proceedings, in a Writ Petition No.39887 of 2005, this Court had granted time till 13.03.2006 to the plaintiff to remove

the movables. Even the said order was challenged by the plaintiff in Writ Appeal No.256 of 2006, which was disposed of, after obtaining an undertaking on 02.03.2006 from the plaintiff that he shall not seek any further extension of time to shift the Orchid Plants. There was a specific direction given to the Land Acquisition Officer to take possession of the premises on 15.04.2006. Pursuant to the said order, the plaintiff handed over possession to the Land Acquisition Officer, who in turn, had handed it over to the defendant on the same day. At that point of time, the plaintiff had never stated anything about the alleged loss caused to the Orchid Plants due to the rains etc. In fact, the plaintiff had been squatting over the property, without removing the movables for more than three years free of cost, by virtue of the orders of the Court. The allegation is that the defendant had blocked the drainage and caused flooding of area in the occupation of the plaintiff and causing damages to the plaintiff were all denied by the defendant and the plaintiff is put to strict proof of the same. In fact, an affidavit was filed on 10.11.2005 by the plaintiff before the Debts Recovery Appellate Tribunal, wherein, there is no whisper about such kind of damage caused to the plaintiff. The plaintiff is put to strict

proof of the said damages, as the burden is strictly on the plaintiff to establish. Even presuming that there were damages to the plants and whether it is attributable to the defendant should be established by the plaintiff. As the allegation of the plaintiff were all imaginary, the defendant prayed for dismissal of the suit.

11. This Court, upon perusal of the pleadings and other materials on record, has framed the following issues for consideration:

1. Whether the plaintiff is entitled for compensation to the tune of Rs.30,00,000/- as claimed by him?
2. Whether the defendant has caused any loss or damages to the plaintiff?
3. Whether the plaintiff was at fault in occupying the acquired lands by the Government till April 2006 and was at default in not setting the Orchid plants and to get sale certificate and thereby committed inaction?
4. Whether the plaintiff is entitled for interest on compensation at 24% p.a?
5. Whether the defendants are entitled for

exemplary costs?

6. To what relief the plaintiff is entitled for?

12. Mr.P.P.Mathew was examined himself as P.W.1 and Mr.Aju John Mathai, S/o.Mathew John was examined as P.W.2 and in lieu of chief examination, filed their proof affidavit and marked Exs.P1 to P23.

Sl .N o	Exhibits	Description of documents	Date
1	P-1	Order in T.A.No.725 of 2002	07.08.2003
2	P-2	Certificate of sale from Debt Recovery Tribunal	13.09.2005
3	P-3	Rough Sketch	
4	P-4 Series	Photographs	13.10.2005
5	P-5	Photograph Bill	13.10.2005
6	P-6	Office copy of letter by plaintiff to defendant	13.10.2005
7	P-7	Office copy of letter by plaintiff to DRO, Kancheepuram	17.10.2005
8	P-8	Office copy of reply by defendant	17.10.2005
9	P-9	Office copy of letter by plaintiff's Manager to S.I of Police	20.10.2005
10	P-10	Photograph Bill	22.10.2005
11	P-11	Office copy of letter by plaintiff to D.G.P	22.10.2005

Sl .N o	Exhibits	Description of documents	Date
12	P-12	Office copy of telegram by plaintiff to defendant	27.10.2005
13	P-13	Bill for purchase of pipes	28.10.2005
14	P-14	Motor Rent Bill	29.10.2005
15	P-15	Office copy of letter by plaintiff	07.11.2005
16	P-16	Photograph Bill	07.11.2005
17	P-17	Earth mover hire bill	08.11.2005
18	P-18	Bill for purchase of pipes	15.11.2005
19	P-19	Plaintiff damage assessment report	20.11.2005
20	P-20	Order in W.P.No.41407 of 2005	06.02.2006
21	P-21	Order in W.A.No.256 of 2006	02.03.2006
22	P-22	Plaintiff's bank statement of Oriental Bank of Commerce for the period from 17.10.2004 to 08.10.2009	09.10.2009
23	P-23	Plaintiff's bank statement of ICICI Bank for the period from 01.07.2009 to 30.09.2009	09.10.2009

13. Mr.R.Eswaran, General Manager - Legal was examined as D.W.1 and filed his proof affidavit. 10 documents were marked as Exs.D1 to D10 on the side of the defendants.

Sl .N o	Exhibits	Description of documents	Date
1	D-1	Terms and Conditions	-
2	D-2	Reply Affidavit	-
3	D-3	Memorandum of Appeal	-
4	D-4	Order in W.P.No.11829 of 2005	21.09.2005
5	D-5	Affidavit of thePetitioner	-
6	D-6	Order in T.A.No.725 of 2002	17.11.2005
7	D-7	Affidavit of the applicant	-
8	D-8	Order in W.A.No.256 of 2006	-
9	D-9	General Power of Attorney	-
10	D-10	Objections to Commissioner's report	-

14. Report of the Advocate Commissioner and Sketch of the Advocate Commissioner were marked as Exs.C1 and C2.

15. Issues Nos.1 to 5:

(i) The suit is filed by the plaintiff claiming damages of Rs.30 lakhs from the defendant for the alleged loss caused to him. The plaintiff was the purchaser of the movables, namely, the Orchid Plants, flowers, machineries and other accessories in a Court auction sale conducted by the Central Bank of India, Coimbatore. The challenge to the said sale went up to the Hon'ble Supreme Court and was confirmed. Though the sale was on 07.08.2003, the

possession could be given only on 25.03.2004. It was stated by the plaintiff that though he had identified the land to shift the plants to such place, he could not do the same as there was a litigation in that said land. That apart, even the possession of the plants were handed over belatedly. Hence, extension of time was sought for before the Debts Recovery Appellate Tribunal, Coimbatore. Thereafter, the sale certificate was issued on 13.09.2005 and again four months was granted for removing the movables. Thereafter, the plaintiff was granted time to vacate the premises in various proceedings and on various dates as follows:

1	I.N.No.84 of 2005	14.11.2005	5 months
2	W.P.No.41407 of 2005	06.02.2006	-
3	W.A.No.256 of 2006	02.03.2006	Time till 14.04.2006
4	Memo in T.A.No.725 of 2002, DRT, Coimbatore.	26.06.2002	Until further orders

(ii) From the above facts, it can be seen that the movables purchased by the plaintiff was in the same premises till 2006. It is stated that during October 2005, there was heavy flow of water around the farm area. It is stated by the learned counsel for the plaintiff that though there were good drainage facilities and that normally water would flow

through the drain, without any inundation, the defendant had laid a high raised level mud road on the Southern side of the farm completely blocking the drain. This has resulted in the drainage being blocked and the water got stagnated. The said action of the defendant according to the plaintiff was deliberate with a view to cause trouble to the plaintiff by purposely laying the mud road. It is also stated that a legal notice was caused on 13.10.2005 calling upon the defendant to restore the drainage facilities. Simultaneously, a letter dated 17.10.2005 was addressed to District Revenue Officer, Kancheepuram and requested for collection of compensation of Rs.3 lakhs towards damages from the defendant for the loss suffered by the plaintiff, for which, the defendant had also sent a suitable reply on 17.10.2005.

(iii) The crux of Ex.P.6 letter, dated 13.10.2005 addressed by the plaintiff to the defendant reads thus:

"A couple of weeks ago too, we had incurred a loss of more than 20 lakhs because of blocked drainage. Please understand, Orchid Plants are catalogued under Wild Life Act, Section 4. Water Logging for more than 36 hours will ensure the mass rotting of these delicate and expensive

plants. We are holding crores of rupees worth of plants in the farm and if anything untoward occurs and endangers their life, you alone will be held responsible and will be answerable to the same".

(iv). As there was again a heavy spell of rain on 17.10.2005, resulting in water stagnation, the plants numbering 32,000 got rotted and damaged due to the conduct of the defendant. Though in the plaint, the plaintiff had mentioned that 7,000 small and big orchid plants in the plaintiff's farm were totally affected and damaged, in the proof affidavit, it is stated that 32,000 plants rotted due to the stagnation of water. It is further stated in the proof affidavit that after a joint meeting with Block Development Officer and the defendant, it was agreed to lay pipelines in the defendant's land restoring the drainage facilities. But, the loss occurred in the meanwhile was more than Rs.30 lakhs according to the plaintiff. In Ex.P.6 letter dated 13.10.2005, the plaintiff had claimed a sum of Rs.20 lakhs as loss occurred to him, but had not mentioned the number of plants damaged or the number of plants available in the farm, whereas, in the proof affidavit, for

the first time, it was claimed that there were 32,000 plants and on 16.11.2005 after pipelines were laid, the loss was assessed at Rs.30 lakhs. There is no iota of evidence produced by the plaintiff with respect to the number of plants that were available on the date of purchase, number of plants destroyed by the floods, the value of the plants and the actual damage caused to make a claim. Above all, the plaintiff also has the burden of proving that the said loss is attributable only due to the malafide intention of the defendant, but according to him, the loss was caused purposely and deliberately.

(v) In the cross examination, the plaintiff has stated that he had more than 2,25,000 plants as he had purchased almost 2,00,000 plants from the Court auction and he had different types of orchid plants. However, the plaint is silent about the same. In the absence of any pleading with respect to number of plants purchased or the value of the same, the plaintiff has made a claim of Rs.30 lakhs from the defendant for tortious liability. "Tort" is any wrong doing or mischief which is a consequence of any commission or omission on the part of one party with respect to the rights of another party. In the instant case, the claims of the plaintiff is limited to the damages suffered by him due to

the obstruction of drainage by the defendant. It is also that the burden is on the plaintiff to prove that a proper drainage was actually in place and that it was fit enough to drain the enormous amount of water due to the rains.

16. From the dates and events mentioned above, it is clear that on the date of handing over of possession, the plaintiff is duty bound to vacate the premises by removing the movables. However, for the reasons best known to him, the plaintiff-firm decided to squat over the property with the aid of Court orders. The defendant, who had been assigned the property of acquisition, without disturbing the plaintiff's possession, had worked on his lands. The intention of the plaintiff is not *bona fide* as he only wanted to squat over the acquired lands and extract money by harassing the defendant in all possible ways and means. When the defendant has only laid the road within the boundaries allotted to him, the plaintiff has got no right to blame the defendant. If the damage was caused due to heavy rain, which is an act of *force majeure*, the defendant cannot be held liable. It is also pointed out by the defendant that even in the affidavit filed by the plaintiff on 10.11.2005 before the Debts Recovery Appellate Tribunal, which is marked as Ex.D.5, there is absolutely no whisper

about the alleged flooding of the area, the blockage of drainage, the number of plants damaged and the value of the same. Vis Major is an overwhelming force of nature having unavoidable consequences that under certain circumstances can exempt one from the obligations of the contract. Generally no one is responsible for an accident which arises from vis major. Act of God can be understood as a natural catastrophe. In the case on hand, it is contended on behalf of the defendant that the incessant rain during monsoon 2005 which caused the alleged damage is an Act of God. However, it is pertinent to note that rains in the monsoon months is an expected event and sufficient protective measures had been taken by the plaintiff by keeping the plants 10 feet above the land and other precautionary measures were also taken. Despite the same, much damages has been caused which is only to be considered *force majeure*. The criteria is whether or not the event could reasonably be anticipated, but whether or not the human foresight and prudence could reasonably recognise the possibility of such an event. It is in fact, the plaintiff, who had caused hardship to the defendant by blocking the premises even after handing over the possession. Hence, the plaintiff is responsible for his own action. Admittedly, there is no report of the District

Collector with regard to the drainage and road as alleged by the plaintiff and there is no such report marked by the plaintiff. Hence, the prayer of the plaintiff, in the absence of any proof, has only to be rejected, as there is no cause of action against the defendant for the suit.

17. In the result, the Civil Suit is dismissed with costs.

Sd/ P.S.N.J

18/10/2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/01.02.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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