

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2016

Coram

The Hon'ble Mr. Justice T.RAJA

W.P. Nos.8545 and 30173 of 2016

A.Jamal Sherif
T.Stalin

.. Petitioner in W.P.No.8545/16
.. Petitioner in W.P.No.30173/16

Vs

- 1.The Principal Chief Conservator of Forest,
Panagal Maaligai, Saidapet,
Chennai - 600 015.
- 2.Conservator of Forests,
259, Anna Salai,
DMS Compound, III Floor,
Teynampet, Chennai - 6. ... Respondents in both Writ
Petitions
- 3.Divisional Forest Officer,
Social Forestry Division,
A/35, Alagesan Nagar,
Chengalpet - 603 001. ... 3rd respondent in W.P.No.8545/16
- 4.G.Palamalai
- 5.V.Somu
- 6.T.Stalin ... Respondents 4 to 6 in W.P.No.8545/16
(R4 to R6 impleaded as per order
dt.07.04.2016 in WMPs.11433 to 11435 of 2016
in WP.No.8545/2016)
- 7.The District Social Forest officer,
Thiruvallur Division,
Thiruvallur - 602 001.
- 8.The Divisional Forest Officer,
Thiruvallur Division,
Thiruvallur - 602 001.
- 9.C.Jamal Sherif .. Respondents 3 to 5 in W.P.No.30173/16

Prayer in W.P.No.8545 of 2016:- Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorarified mandamus to call for the records of the third respondent relating to the impugned auction notification in Na.Ka.No.1507/2015/L, dated 29.01.2016, and quash the same and direct the respondents to conduct fresh auction for the 13 Babul Plantations as specified in the said notification.

Prayer in W.P.No.30173 of 2016:- Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus to direct the respondents 3 and 4 to allot the tender in Thiruvallur District, Ponneri Division, Kakavakkam Village Plantation auction conducted by the respondents 3 and 4 dated 04.03.2016 to the petitioner's favour pursuant to the representation dated 28.07.2016.

In W.P.No.8545/16

For petitioner .. Mr.Raja Kalifulla, SC
for I.Abrar Md. Abdullah
For R1 to R3 .. Mr.M.Santhanaraman, Spl.GP (Forests)
For R4 to R6 .. Mr.K.Krishnan

In W.P.No.30173/16

For petitioner .. Mr.K.Krishnan
For R1 to R4 .. Mr.M.Santhanaraman, Spl.GP (Forests)
For R5 .. Mr.Raja Kalifulla, SC
for I.Abrar Md. Abdullah

COMMON ORDER

W.P.No.8545 of 2016 was filed by one Mr.A.Jamal Sherif/Contractor challenging the Notification dated 29.01.2016 issued by the third respondent / Divisional Forest Officer, Chengalpattu, inviting the auction for sale of Babul Plantation of Social Forestry Division, Chengalpattu.

2. W.P.No.30173 of 2016 was filed by one Mr.T.Stalin, who is also sixth respondent in W.P.No.8545 of 2016, seeking a direction to the respondents 3 and 4 / the District Social Forest Officer and the Divisional Forest Officer of Thiruvallur Division, to allot the tender in Thiruvallur District, Ponneri Division, Kakavakkam Village Plantation, in his favour, pursuant to his representation dated 28.07.2016. In the said representation, it is seen that he wanted to scrap the work order given to Mr.Jamal Sheriff / petitioner in W.P.No.8545 of 2016 as he is ready to pay 10% of amount more than paid the said Jamal Sheriff.

3. Mr.Raja Kalifulla, learned Senior counsel appearing for the petitioner in W.P.No.8545 of 2016 submitted that the

petitioner has been doing the forest contract work for the past 40 years and he is willing to complete the 15 government works every year. It is further submitted that the third respondent issued a Notification dated 29.01.2016 inviting the contractors to participate in the auction process to be conducted on 02.03.2016 at 11 a.m. for the purpose of cutting of Babul Plantation in 13 plantations situated at various forest ranges. Thereafter, when the petitioner went to the office of the respondent on 02.03.2016 along with an amount of Rs.9,20,000/- as the Earnest Money Deposit (EMD), he was prevented from entering into the auction place by five persons and therefore, he was able to meet the third respondent only at 4 p.m. and thereupon, he has also handed over the demand draft for almost 1/3rd of the entire contractual amount and he further undertook to pay the balance amount within a stipulated time. Again, when the petitioner requested the third respondent to confirm the auction in his favour, there was no reply from the said authority. Thus, he filed the writ petition in W.P.No.8545 of 2016 with a prayer cited supra.

4. It is further contended by the learned Senior counsel that though the petitioner was willing to pay the bid amount, he was physically prevented by five persons from taking part in the public auction so as to favour a particular contractor and thus, the entire auction process is vitiated. It is further submitted that in order to show his bonafide, the petitioner has handed over a demand draft for almost 1/3rd of the contractual amount with an undertaking to pay the remaining amount or required amount within a stipulated time, but, the same was not considered by the respondent. It is further contended that on the date of auction conducted at the third respondent's office, only five persons were permitted to participate in the auction proceedings and they have also formed a cartel and out of five persons, only three persons were granted all the 13 items stated in the Notification and on this basis, learned Senior counsel contended that the entire auction process is vitiated and therefore, the same is liable to be quashed, with a direction to the respondents to conduct fresh auction for the said 13 Babul Plantations.

5. It is further submitted that the petitioner / A.Jamal Sheriff gave his representation dated 02.03.2016 along with DD for 1/3rd amount of the contractual bid, however, the respondent did not accept his bid, but, on the contrary, the respondent has proceeded to issue a confirmation order in favour of the third respondent, that too without giving any reply on the said representation of the petitioner. Thus, learned Senior counsel contended that entire auction proceedings conducted by the respondent without following the rules and regulations adumbrated in the auction of trees and forest produce by the

Forest Department are liable to be quashed.

6. Mr.K.Krishnan, learned counsel for the respondents 4 to 6 and the petitioner in W.P.No.30173 of 2016 submitted that the petitioner / Mr.A.Jamal Sherif is not a successful contractor. When the registered contractors have deposited the EMD to the tendering authority one hour before the time of auction dated 02.03.2016, the petitioner has not deposited the same. Since he is a registered contractor, he is well known to the terms and conditions of auction. Thus, he pleaded, the averment of the petitioner that he has paid 1/3rd of the contractual amount with an undertaking to pay the balance amount within a stipulated time is totally false. It is further submitted that on 02.03.2016, the tendering authority gave sufficient time to the Registered Contractors to register themselves by paying the EMD one hour before the scheduled time for auction, however, around 11 a.m., when the auction was about to start, a group of unregistered contractors and the petitioner met the third respondent and handed over a letter requesting them to cancel the auction as the rate fixed by the Government was high without knowing the actual rates which was in sealed cover and thus, he contended, the intention of the petitioner is only to stall the entire auction process on some flimsy grounds. It is further stated that auction was confirmed on 03.03.2016 with a direction to the successful bidders to pay the balance auction amount within a period of 30 days and accordingly, all the bidders have paid their respective amount to all 13 babul plantations and thereafter, on receipt of such amount, the third respondent has also issued work order. Thus, he pleaded, filing a writ petition by one Mr.Jamal Sherif seeking to quash the entire process is nothing but stalling the entire process.

7. It is further submitted that the real motive of the petitioner/Jamal Sheriff is only to stall the entire auction proceedings indirectly by way of filing this writ petition. Had he really aggrieved, he would have filed the writ petition before finalization of the work order to 13 babul plantations, in which, the respondents 4 to 6 i.e. G.Palamalai, V.Somu and T.Stalin were allotted six babul plantations as they were the highest bidder in the auction conducted by the respondent authority, thus, filing of this writ petition after issuance of the work order for the said 13 babul plantations is nothing but a tactics adopted by the petitioner/Jamal Sheriff to delay the auction proceedings. Thus, on this basis, he prayed for dismissal of the writ petition filed by the said individual.

8. In respect of W.P.No.30173 of 2016, it is submitted that the value of Kakavakkam Village Babul Plantation is more than Rs.65,00,000/-, but, the fifth respondent / Mr.A.Jamal

Sheriff has illegally succeeded the auction conducted by the respondents 3 and 4 on 04.03.2016 and he has paid the tender amount of Rs.46,02,000/-, which has ultimately created the loss to the exchequer to the tune of Rs.18,98,000/-. Therefore, when he has sent a representation dated 28.07.2016 to the respondents 3 and 4 stating that he is ready to pay 10% of amount more than the amount paid by the fifth respondent, there was no response from them.

9. Mr.M.Santhanaraman, learned Special Government Pleader (Forests) appearing for the official respondents submitted that both the petitioners have wrongly come to this Court showing their rivalry causing loss of valuable time to the department and to this Court without there-being any merit in their writ petitions, hence, the same are liable to be dismissed. It is further submitted that when the Social Forestry Division, Chengalpattu, has issued a Notification dated 29.01.2016 for re-auction of Babul Plantations on 02.03.2016 for the removal of the Babul growth, sufficient time was given to the contractors to register themselves by paying the EMD to participate in the auction. However, around 11.30 a.m., when the auction was about to start, a group of contractors, including the petitioner/Mr.A.Jamal Sherif, met the respondent and handed over a letter requesting them to cancel the auction stating that the rate fixed by the Government was high without knowing the actual rates, which was in sealed cover and thus, such conduct of the petitioner and other group of contractors shows that they wanted only to stall the entire process of auction on some flimsy grounds. It is further submitted that the averment of the petitioner / Mr.A.Jamal Sheriff that he has handed over the demand draft of 1/3rd amount of the contractual amount is totally a false one, since the demand draft was received by the respondent department by registered post only on 09.03.2016. Moreover, he has not given any police complaint about his prevention from participating in the auction to the Observer of Auction, namely, Conservator of Forests, Chennai, or any other higher ups in the Forest Department, namely, Chief Conservator of Forests (Publicity) or Chief Conservator of Forests ((Headquarters) or Additional Principal Chief Conservator of Forests (Social Forestry and Extension) or Principal Chief Conservator of Forests either phone or in written communication. Thus, he contended, when the petitioner has not made any complaint to the police authorities, it has to be eschewed that such allegation of the petitioner is totally a false one.

10. Learned counsel for the official respondents further submitted that as per the records produced by the Divisional Forest officer, Social Forestry Division, Chengalpattu, 7 contractors paid the EMD and registered

themselves to participate in the auction and of the seven, only five had participated in the auction and thereafter, 13 babul plantations were sold in the auction above the fair price. On the said day, the sale was over by 2 p.m. and the Divisional Forest Officer, Social Forestry Division, Chengalpattu, requested the successful contractors to pay the 1/3rd of the bid amount as per the auction conditions. Thereafter, the petitioner/Jamal Sherif met the third respondent only in the evening and requested for re-auction of plantations, that were already auctioned, and therefore, the third respondent informed the petitioner that the auction was conducted as per the procedure in the presence of the Observer, hence, grievances, if any, will have to be represented before the Observer, Conservator of Forests, Chennai. Thus, he pleaded, the entire auction process was conducted as per the procedure by the third respondent and that all the plantations were sold above the fair price and thereafter, successful contractors have also paid 1/3rd of the bid amount as per the conditions and the balance amount was also paid to the Government on 03.03.2016 and thereafter, the third respondent has also issued work orders to the successful contractors on 04.03.2016. Thus, filing of writ petitions by the petitioners at this stage is nothing but arm twisting the government for scuttling the process of auction which was done as per the procedures enumerated in the terms and conditions of the notification dated 29.01.2016. On this basis, he prayed for dismissal of the writ petitions.

11. Heard the learned counsel appearing on either side and perused the materials available on record.

12. It is not in dispute that the auction was conducted on 02.03.2016 for sale of Babul Plantation of Social Forestry Division, Chengalpattu, in the presence of the Observer, the Conservator of Forests, Chennai. In the said Notification, sufficient time was also given to the contractors to register themselves by paying the EMD to participate in the auction. Whilso, around 11.30 a.m. on the said day, when the auction was about to start, a group of contractors met the second respondent and handed over a letter requesting them to cancel the auction, by stating that the rate fixed by the Government was high, which was kept in the sealed cover. It is not known how the petitioner / Mr.A.Jamal Sheriff could make such a request when the fair price fixed by the Government was in the sealed cover. The contention of the learned Senior counsel that the petitioner was prevented from participating in the auction and that he has also handed over a demand draft for 1/3rd of the entire contractual amount are far from acceptance, for, the said demand draft said to have been sent by the petitioner was received by registered post only on 09.03.2016. Besides, the petitioner has

also not made any police complaint for such allegation, nor to the higher ups of the department, namely, Chief Conservator of Forests (Publicity) or Chief Conservator of Forests ((Headquarters) or Additional Principal Chief Conservator of Forests (Social Forestry and Extension) or Principal Chief Conservator of Forests. No other contractors have also made any complaint about the prevention from participating in the auction. Thus, it has to be held that the auction held on 02.03.2016 was smooth.

13. It is also further seen from the records produced by the Divisional Forest Officer, Social Forestry Division, Chengalpattu, that seven contractors, by registering themselves, have paid the EMD and out of the seven contractors, only five contractors participated in the auction and thereafter, all the 13 Babul Plantations were sold in the auction above the fair price fixed by the Government. Thus, I do not find any error in the impugned auction process done by the respondent department.

14. Coming to the Writ Petition No.30173 of 2016 filed by one Mr.T.Stalin, the prayer in the said writ petition is to issue a direction to the respondents 3 and 4 to allot the tender in Thiruvallur District, Ponneri Division, Kakavakkam Village Plantation, to his favour, as he is ready to pay the more than the amount quoted by one Mr.Jamal Sherif / petitioner in W.P.No.8545 of 2016. In fact, the respondent department has allotted the said work order only to Mr.Jamal Sherif, as he was the highest bidder in the auction conducted on 04.03.2016. The only contention of the petitioner is that the value of the Kakavakkam Village Babul Plantation is more than Rs.65,00,000/-, however, the fifth respondent / Jamal Sheriff was given tender on 04.03.2016 only to the tune of Rs.46,02,000/- and this has created a loss to the exchequer to the tune of Rs.18,98,000/-.

15. It is seen that the Conservator of Forests, Chennai, in his letter dated 18.11.2015, has fixed the fair price of the Kakavakkam Babul Plantations at Rs.33,96,938/-. The petitioner / T.Stalin has also participated in the auction proceedings conducted on 04.03.2016 at the District Forest office, Thiruvallur, and thereby he has also deposited the EMD for participating in the auction. During the public auction, the petitioner has given a bid for two plantations, including Kakavakkam babul plantation, however, he did not offer any bid, while auction was conducted for Kakavakkam plantation. The highest bid for the said plantation was quoted by the fifth respondent / Jamal Sheriff to the tune of Rs.46,02,000/-, which is more than the fair price fixed by the Government. Thus, I do not find any merit on the contention of the petitioner to allot the tender in his favour although he is ready to pay more than the amount quoted by the said Jamal Sheriff, for, he had failed

to take part in the auction nor quoted any bid amount, while the auction was conducted for Kakavakkam Plantation. Besides, he has no-locus standi now to seek a direction to the authorities to allot such tender in his favour, for, he was a stranger to the auction held on 04.03.2016

16. Therefore, for the reasons stated above, both the writ petitions fail and the same are dismissed as devoid of any merit. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm
To

- 1.The Principal Chief Conservator of Forest,
Panagal Maaligai, Saidapet,
Chennai - 600 015.
- 2.Conservator of Forests,
259, Anna Salai,
DMS Compound, III Floor,
Teynampet, Chennai - 6.
- 3.Divisional Forest Officer,
Social Forestry Division,
A/35, Alagesan Nagar,
Chengalpet - 603 001.
- 4.The District Social Forest officer,
Thiruvallur Division,
Thiruvallur - 602 001.
- 5.The Divisional Forest Officer,
Thiruvallur Division,
Thiruvallur - 602 001.

+1cc to Mr.I. Abrar MD Abdullah, Advocate, S.R.No.73612
+1cc to Mr.A. Sriraji, Advocate, S.R.No.73886
+1cc to the Spl.Government Pleader, S.R.No.73638

lrs (CO)
md(04/01/2017)

W.P. Nos.8545 and 30173 of 2016