

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.39462 of 2004
and
W.P.M.P.No.47033 of 2004

M/s.M.G.K.Trading House,
Rep. by its Managing Partner B.Geetha,
No.45, (Old No.30), Panchalamman Koil Street,
Arumbakkam,
Chennai-600 106. ... Petitioner

Vs.

1. The Chairman,
Madras Port Trust,
No.1, Rajaji Salai,
Chennai-600 001.
2. The Docks Manager (Commercial),
Madras Port Trust,
No.1, Rajaji Salai,
Chennai-600 001.
3. M/s.Orissa Stevedores Limited,
No.4 (Old No.19), Second Floor,
Narayanappa Street,
Mannady, Chennai-600 001.
4. M/s.Sea Star Shipping and Trading Inc.,
No.4, Narayanappa Street,
First Floor, Back side Customs House,
Chennai-600 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to forbear the respondents 1 and 2 from selling the cargo, namely Pottasium Felspar lying in Wharf EQ in the Chennai Port Trust premises by way of public auction in pursuant to the notice, dated 14.10.2004 and 21.12.2004 in their Ref.No.GL/Mis/04/TC on the file of the second respondent.

For petitioner : Mr.R.Manickavel

For respondents : Mr.R.Karthikeyan for RR-1 and 2
Mr.S.Vasudevan for RR-3 and 4

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to forbear the respondents 1 and 2 from selling the cargo, namely Pottasium Felspar lying in Wharf EQ in the Chennai Port Trust premises by way of public auction in pursuant to the notice, dated 14.10.2004 and 21.12.2004 in their Ref.No.GL/Mis/04/TC on the file of the second respondent.

2. It is submitted by the learned counsel for the petitioner that under the wrong premise and false information given by the respondents 3 and 4, the cargo in question had been seized and kept in the custody of the Chennai Port Trust and not released and that they have been incurring severe loss and damage.

3. Learned counsel appearing for the respondents 1 and 2 / Port Trust submitted that there is no cargo, namely Pottasium Felspar lying in Wharf EQ in the Port Trust premises and that the said cargo contents are in damaged condition and the plants and debris have come up in the place where the said cargo was kept.

4. Learned counsel for the respondents 3 and 4 submitted that the petitioner has already filed a civil suit in C.S.No.121 of 2005 before this Court and that even though the said civil suit number has not been quoted by the petitioner in the affidavit filed in support of the Writ Petition or enclosed the details in the typed set of papers therein, they have simply referred to the same in paragraph 26 of the affidavit, which reads as follows:

"26. I state that in the facts and circumstances, I have already filed a suit for the recovery of a sum of Rs.1,10,23,750/- being the cost of the cargo and the suit is yet to be numbered. Now, the respondents 1 and 2 threatening to sell the cargo by way of public auction."

5. Even though it has been stated that the suit was not numbered on the date of filing of this Writ Petition, now it is seen that the said civil suit is pending before this Court in C.S.No.121 of 2005, which is in hearing stage.

6. In view of the submissions made by the learned counsel appearing for the parties, it is not necessary to further adjudicate in this matter, as there is no cargo, namely Pottasium Felspar lying in the Port Trust for utilising the same. At the most, the petitioner would be entitled for the compensation, if the petitioner is able to substantiate their stand in the civil suit pending. Without prejudice to the contentions raised in the Writ Petition, this Writ Petition is disposed of, giving liberty to the petitioner to raise all the points that are available to them, including the ones raised in the Writ Petition, in the civil suit that is pending. No costs. W.P.M.P. is closed.

7. Learned counsel for the Chennai Port Trust submitted that the Port Trust is entitled for demurrage, as the Potassium Felspar was kept in open place and because of the interim order obtained by the petitioner, no further action was taken by the Port Trust. It is open for the Port Trust to take any steps for demurrage or any other charges including the compensation, in accordance with law and it is also open for the petitioner-Company to defend the same.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
Madras Port Trust,
No.1, Rajaji Salai,
Chennai-600 001.
2. The Docks Manager (Commercial),
Madras Port Trust,
No.1, Rajaji Salai,
Chennai-600 001.

+1cc to Mr.R.Manickavel, Advocate, S.R.No.55495
+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.56156
+1cc to Mr.S.Vasudevan, Advocate, S.R.No.55882

W.P.No.39462 of 2004

AR J
CA(28/08/2017)