

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 09.07.2018	Delivered on 27.07.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.134 of 2014

M/s.Nandh Products Promoters (P) Ltd.,
No.9 and 10 Ground Floor,
Represented by its Chairman K.N.Panduranga Setty,
53, Manandi Jewels Plaza,
Nagarathanpet Main Road,
Bangalore - 560053. Appellant/Petitioner

versus

The District Forest Officer,
Salem, Salem Division. Respondent/Respondent

PRAYER: Appeal filed against the order passed by this Court
dated 03.04.2013 passed in W.P.No.4909 of 2004.

Prayer in WP.4909/2004:

Petition filed under article 226 of the constitution of
India praying for the issuance of writ of certiorarified
Mandamus to call for the records relating to the order dated
28.01.2004 in Proc. No.S/2239/01 passed by the respondent and
quash the same and for a consequential direction to the
respondent to release 2.5 Mts. of Sandal wood and 30 Mts. of
Sapwood purchased by the petitioner in the sandalwood sale held
as 27.02.2001.

For Appellant : Mr.M.Liagat Ali
For Respondent : Mr.Balaramesh
Special Government Pleader

J U D G M E N T

R.SUBRAMANIAN, J.

1. The appellant challenges the order of the learned Single
Judge dated 03.04.2013 made in W.P.No.4909 of 2004, in and by
which, the learned Single Judge while allowing the Writ Petition
filed by the appellant, seeking to quash the proceedings of the
respondent dated 28.01.2004 and for a consequential direction to

the respondent to release 2.5 metric tons of sandalwood and 30 metric tons of sapwood purchased by the appellant in the auction held on 27.02.2001, directed the respondent to refund the monies paid by the appellant towards the value of the sandalwood and the sapwood purchased by it with 12% interest, if it is paid within the time fixed by the Court and in the event of delay with 18% interest per annum.

2. The appellant is aggrieved by the denial of the consequential relief to release 2.5 metric tons of sandalwood and 30 metric tons of sapwood. The claim of the appellant in the Writ Petition was that the appellant which is a Private Limited Company entitled to deal with sandalwood had participated in the auction of sandalwood held by the respondent on 27.02.2001. It was the successful bidder for a quantity of 2.5 metric tons of sandalwood valued at Rs.15,57,400/- and 30 metric tons of sapwood valued at Rs.1,94,000/-. The confirmation order was also issued by the respondent on 15.03.2001. It is not in dispute that the appellant/ petitioner has paid the entire amount payable towards the value of the sandalwood as well as the sapwood amounting to Rs.17,55,314/-, while so, the respondent issued proceedings dated 02.05.2001 holding that two of the Directors of the petitioner are also partners of the firm M/s.Mahalakshmi Flour Mills, Bangalore and since M/s.Mahalakshmi Flour Mills have not renewed the Bank Guarantee for the Sales Tax dues amounting to Rs.20,07,209/- and the penal interest and demurrage charges of Rs.80,31,289/- beyond 03.09.2000 as per the directions of this Court made in W.P.No.2239 of 1994, a sum of Rs.17,55,314/- paid by the petitioner towards the value of 2.5 metric tons of sandalwood and 30 metric tons of sapwood was to be adjusted against the dues of the firm.

3. The petitioner sent a reply to the said show cause notice on 12.05.2001. Since no orders were passed by the respondent, the appellant had filed Writ Petitions in W.P.No.11198 and 11199 of 2001 in this Court and this Court by an order dated 15.06.2001 disposed of the above Writ Petitions with a direction to the respondent to pass final orders within one month from the date of the receipt of a copy of the order. Thereafter, the respondent had passed the impugned order on 28.01.2004, forfeiting a sum of Rs.17,55,314/- paid by the appellant. It was this order forfeiting a sum of Rs.17,55,314/- that was challenged in the Writ Petition in W.P.No.4909 of 2004. In support of the challenge to the order dated 28.01.2004 the appellant would claim that the appellant being an independent entity cannot be fastened with a liability of another firm merely because two of the Directors of the appellant happened to be partners of the other firm viz., M/s.Mahalakshmi Flour Mills. It is also contended that the liability regarding Sales Tax does not arise, since, the Hon'ble Supreme Court had ruled in favour of the Assessee in the proceedings relating to payment of Sales Tax.

4. The Writ Petition was resisted by the respondent contending that the Firm M/s.Mahalakshmi Flour Mills was directed to furnish Bank Guarantee and since the Bank Guarantee was not renewed the Department could not recover the Sales Tax dues, therefore, the respondent was justified in forfeiting the amount paid by the appellant towards the value of the sandalwood and the sapwood purchased by it at the auction that was held on 27.02.2001.

5. The learned Single Judge, who heard the Writ Petition, concluded that the respondent cannot fasten the liability on the appellant having failed to take action for renewal of the Bank Guarantee furnished by M/s.Mahalakshmi Flour Mills after 03.09.2000. It was also found that the failure on the part of the respondent to take action against the firm viz., M/s.Mahalakshmi Flour Mills, once it failed to renew the Bank Guarantee would prevent the respondent from forfeiting the monies paid by the appellant who was a successful bidder in an auction after collecting the entire amount from it. The learned Single Judge also found that, if at all any amount is due from M/s.Mahalakshmi Flour Mills, it is for the respondent to have taken action for recovery of the same from the said M/s.Mahalakshmi Flour Mills.

6. On the above findings, the learned Single Judge held that, the order impugned in the Writ Petition dated 28.01.2004 forfeiting the monies paid by the appellant has to be set aside and the same was accordingly set aside. While considering the prayer of the appellant for delivery of the sandalwood and sapwood sold to it, the learned Single Judge directed repayment of the monies paid by the appellant with interest at 12% per annum if the money is paid within one month from the date of production of the copy of the order. There was a further direction that the amount be paid with interest at 18% per annum if the same is not paid during the one month from the date of production of a copy of the order. It is against this order the appellant has come forward with the above appeal.

7. The respondent has not challenged the order of the learned Single Judge quashing the order of forfeiture dated 28.01.2004 which was impugned in the Writ Petition. It is also on record that the respondent has not complied with the directions of the learned Single Judge to repay a sum of Rs.17,55,314/- paid by the appellant. Hence, the only question that arises in this appeal is as to whether the appellant is entitled to the refund of money with interest or the quantity of sandalwood and sapwood purchased by it in the auction held on 27.02.2001 in specie.

8. We have heard Mr.M.Liagat Ali, learned counsel for the appellant and Mr.Balaramesh, learned Special Government Pleader,

(Forest) appearing for the respondent.

9. Mr.M.Liagat Ali, learned counsel appearing for the appellant would submit that once it is found that the order of forfeiture is invalid, he will be automatically entitled to the consequential relief of delivery of sandalwood and sapwood purchased by the appellant in the auction held on 27.02.2001. Therefore, according to him, the learned Single Judge was not right in directing refund of the money with interest. Mr.M.Liagat Ali, learned counsel would also draw our attention to the specific finding of the learned Single Judge which reads as follows:-

“Even though the learned Special Government Pleader represented that they have sold the sandalwood subsequently, no such document has been produced by them to prove the said contention.”

Relying upon the above finding, Mr.M.Liagat Ali, learned counsel appearing for the appellant would contend that the learned Single Judge was not right in directing refund of the monies paid by the appellant along with interest.

10. Per contra Mr.Balaramesh, learned Special Government Pleader, (Forest) appearing for the respondent would contend that the auction related to the year 2001 and the value of the sandalwood as well as sapwood have gone up several times and if the respondent is directed to deliver 2.5 metric tons of sandalwood and 30 metric tons of sapwood which were sold in the auction dated 27.02.2001, the respondent will be greatly prejudiced. The learned Special Government Pleader would also contend that the learned Single Judge was right in directing the Department to refund the monies with interest.

11. We have considered the rival submissions. The order of the learned Single Judge issuing a Writ of Certiorari quashing the penalty of forfeiture imposed by the respondent vide order dated 28.01.2004 has not been challenged by the respondent. The further direction to repay the value of the sandalwood and sapwood with interest is also not under challenge at the instance of the respondent. Therefore, Mr.M.Liagat Ali, is justified in contending that once this Court had found that the order of forfeiture is wrong, the learned Single Judge should have directed delivery of 2.5 metric tons of sandalwood and 30 metric tons of sapwood which were also forfeited along with the money paid by the appellant. However, we cannot also ignore the submissions of the learned Special Government Pleader regarding prejudice in view of the steep increase in the value of the sandalwood and sapwood due to passage of time.

12. We are therefore of the considered opinion that, the equities could be worked by directing the respondent to deliver the quantity of sandalwood and sapwood for the value of

Rs.17,55,314/- along with interest at 18% per annum upto the date of delivery of the quantity of wood in specie. We are constrained to point out that though the respondent have not challenged the order of the learned Single Judge despite lapse of nearly five years, the respondent have not come forward to comply with the order of the learned Single Judge, even though the learned Single Judge had directed that the interest payable will go up by 6% i.e., from 12% to 18% per annum if the respondent does not pay the value of the sandalwood and the sapwood within a period of one month from the date of receipt of a copy of the order.

13. In view of the above, this intra-Court appeal is allowed in part and while sustaining the order of the learned Single Judge relating to quashing of the order of forfeiture dated 28.04.2004, we set aside that portion of the order of the learned Single Judge by which he had directed the respondent to pay a sum of Rs.17,55,314/- with interest at 18% per annum [since it is admitted that the amount has not been paid within one month from the date of receipt of a copy of the order] and direct the respondent to deliver the quantity of sandalwood for the value of Rs.15,57,400/- with interest at 18% per annum from 15.05.2001 till date of delivery of the wood in specie and also deliver the quantity of the sapwood for the value of Rs.1,94,000/- with interest at 18% per annum from 15.05.2001 till date of delivery of the sapwood in specie at their present market value.

14. In fine, the Writ Appeal is allowed in part with the above directions. However, in the circumstances of the case without costs.

Sd/-
Assistant Registrar (CCC)

// True Copy//

Sub Assistant Registrar

To
The District Forest Officer,
Salem, Salem Division.

+1 cc to Mr.M.Ligat Ali, Advocate SR.No.50572 (24.08.2018)

+1cc to Special Government Pleader SR.No.50547

Judgment in
W.A.No.134 of 2014

SJ(CO)
SMI/10.08.2018