



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.7346 of 2018

and

W.M.P. (MD) Nos.7031 & 7032 of 2018

Vargeesh

... Petitioner

vs.

- 1.The Managing Director
Arasu Rubber Corporation
Nagercoil, Kanyakumari District
- 2.The Divisional Manager
Arasu Rubber Corporation
Chittar Division, Chittar Colony
Kanyakumari District
- 3.The District Forest Officer
Kanyakumari Division at Nagercoil
- 4.The Forest Range Officer
Kulasekaram
Kanyakumari District

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus by calling for the records relating to the impugned order passed by the second respondent vide Na.Ka.No.Va/1109/2017, dated 22.03.2018 and quash the same as illegal consequently direct the respondents to permit the petitioner to cut and remove the 178 rubber trees from Chittar (113 trees) and Maruthamparai unit (65 trees).

For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.N.Shanmugaselvam

Addl. Govt. Pleader for R3 & R4

Mr.C.Selvaraj for R1 & R2

O R D E R

By an agreement dated 09.01.2018 entered into by the petitioner with the first respondent herein pursuant to a tender-cum-auction confirmed on 28.12.2017, the petitioner was permitted to enter into the first respondent's fields and remove the wind fallen rubber trees, on or before 22.02.2018. There was a further clause that for belated removal of fallen trees, the petitioner should pay a sum of Rs.50/- per day per tree. Since the trees happened to be inside the forest land, permission of the third respondent was mandatory and therefore, the petitioner made a request seeking for permission to enter into forest and by an order dated 15.03.2018 the third



respondent herein had permitted the petitioner to enter into the forest for the purpose of removing the wind fallen rubber trees. It is seen that the said order dated 15.03.2018 has been signed only on 21.03.2018 and the petitioner claims that he had received the order on 22.03.2018. On the same day the fourth respondent also had granted permission for the petitioner to transport the fallen trees through Zero Point Check Post.

2. It is in this background the impugned order, dated 22.03.2018 came to be passed whereby the second respondent herein had observed that though the permit from the third respondent was granted on 15.03.2018 itself, the petitioner had not taken effective steps to remove the fallen trees and thereby imposed penalty at the rate of Rs.8,900/- per day for 24 days and had adjusted the said sum from the security deposit of Rs.2,67,000/-. Consequently, the petitioner was directed to remove the fallen trees for the balance amount of Rs.53,400/- alone from 23.03.2018.

3. As rightly pointed out by the learned counsel for the petitioner, though the permit of the third respondent is dated 15.03.2018, the same came to be signed only on 21.03.2018 which is claimed to have been received by the petitioner on 22.03.2018. The petitioner had immediately taken efforts to obtain the necessary permit to transport the fallen trees through the check post from the fourth respondent herein. However, without considering this aspect, the impugned order came to be passed.

4. In my view, the second respondent may not be justified in imposing any penalty and adjusting the same from the security deposit in view of the fact that the petitioner was not at fault for not removing the fallen trees and that the permit came to be received only on 22.03.2018. In view of the delay in granting permit to the petitioner, the second respondent is not justified in levying any penalty.

5. In view of the above observations, the impugned order, dated 22.03.2018, passed by the second respondent herein, is set aside. Consequently, the petitioner is permitted to remove the wind fallen rubber trees in Arasu Rubber Corporation Limited in as is where is condition, within a period of four weeks from the date of receipt of a copy of this order. All other terms and conditions of the agreement, dated 09.01.2018, entered into between the petitioner and the first respondent shall remain intact.

6. The writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar



To:

1.The District Forest Officer,
Kanniyakumari Division at
Nagercoil.

2.The Forest Range Officer,
Kulasekaram,
Kanniyakumari District.

+1cc to M/S.K.P.Narayanakumar, Advocate SR.No. 60903

+1cc to M/S.C.Selvaraj, Advocate SR.No. 60885

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krk

JM/SV MMS/SAR 4/16.04.2018/3P/5C