



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2018

WEB COPY

CORAM:

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

W.A (MD) No.1249 of 2018
and
C.M.P (MD) No.8747 of 2018

K.Selvaraj : Appellant/7th Respondent

Vs.

1. N.Sam Arthur : 1st Respondent/Writ Petitioner
2. The Arasu Rubber Corporation Limited,
Rep. by its Chairman,
Office of the Arasu Rubber Corporation Limited,
Chennai - 600 015.
3. The District Forest Officer,
Kanyakumari Division,
Nagercoil,
Kanyakumari District.
4. The Managing Director/Chief Executive,
Arasu Rubber Corporation Limited,
Vadaseri, Nagercoil,
Kanyakumari District.
5. The Joint Managing Director,
Arasu Rubber Corporation Limited,
Vadaseri,
Nagercoil,
Kanyakumari District.
6. The Divisional Manager,
Arasu Rubber Corporation Limited,
Kondayar Division, Kondayar,
Kanyakumari District.



7. Chinnathurai,
Divisional Manager,
Arasu Rubber Corporation Limited,
Kondayar Division, Kondayar,
Kanyakumari District.

... Respondents 2 to 7/
Respondents 1 to 6

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 30.08.2013 made in W.P(MD)No.9028 of 2013, on the file of this Court.

Prayer in WP(MD)No. 9028/2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 5 to stop forthwith the cutting, removal and transportation of the Rubber Trees by the 7th respondent in the Kodayar Division of the 1st respondent ARasu Rubber Corporation Limited which are the subject matter under Tender Notification issued by the 5th respondent in Na.Ka.No. D/941/2012 dated 18/04/2013 and to conduct an enquiry in regard to the said allotment of tender in favour of the 7th respondent and to direct fresh Tender cum Auction in respect of the above subject matter.

For Appellant	: Mr.Pala Ramasamy
For R - 1	: Mr.K.Ragatheesh Kumar for M/s.Isaac Chambers
For RR 2 to 6	: Mrs.J.Padmaavathi Devi, Special Government Pleader.

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.)**

This writ appeal is preferred by the seventh respondent in the Writ Petition against the order, dated 30.08.2013 passed in W.P (MD)No.9028 of 2013.

2. The Writ Petition was filed for a Mandamus directing the respondents 1 to 5 therein to stop the cutting, removal and transportation of the rubber trees by the seventh respondent therein, namely, the appellant herein in the Kodayar Division of the first respondent/Arasu Rubber Corporation Limited.

3. The brief facts of the case are as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>
(1) There was a tender notification on 18.04.2013 for disposal of wind fallen rubber trees, for which, an auction was held on



18.04.2013. The main condition of the auction was that only the registered contractors are entitled to take part in the auction. The first respondent/writ petitioner had submitted his tender on 18.04.2013 before the sixth respondent/fifth respondent and he was declared as the highest bidder. However, he was not awarded of the contract, as the amount quoted by him was less than the amount prescribed by the Government. Hence, the tender had been cancelled. Again there was a fresh tender on 29.04.2013 and in the re-auction also, the same first respondent/writ petitioner was the highest bidder. Even the said tender was cancelled on the ground that the tender amount offered was not satisfactory.

(ii) In the meanwhile, the appellant/seventh respondent had started cutting of the wind fallen rubber trees from the Kodaiyar Division and transported the same. Hence, the writ petitioner, who is the first respondent herein, approached the sixth respondent/fifth respondent, who informed orally that there was an oral agreement between the official respondents and the appellant/seventh respondent to pay Rs.200/- more than the amount quoted by the first respondent/writ petitioner and therefore, the tender was awarded in favour of the appellant/seventh respondent.

(iii) It was contended by the first respondent/writ petitioner that the appellant/seventh respondent was not a registered contractor and he never participated in the tender. Even then, the award of contract had been given to him.

(iv) It has been stated by the learned Government Advocate that only to prevent loss to the Corporation and to the Government, the work was given to the appellant/seventh respondent. Therefore, there is no illegality in the same.

(v) The learned Single Judge by considering the challenge made by the first respondent/writ petitioner found in paragraph No.15 as follows:-

"15. The permission to grant the contract to the seventh respondent was passed by the third respondent, Managing Director only on 22.05.2013, even though the letter, was dated 18.05.2013. Whereas the order was given by the fifth respondent on 20.05.2013 ie., even before getting the permission from the third respondent. The aforesaid facts are evident from the communication, dated 18.05.2013 signed by the Managing Director and the communication dated 22.05.2013 and the another communication dated 20.05.2013 issued by the fifth respondent. The aforesaid documents only prove that the fifth respondent already made up his mind to award the contract to the seventh respondent and awarded the contract on 20.05.2013 and got permission from the third respondent on 22.05.2013. Therefore, the act of awarding contract to



the seventh respondent by the fifth respondent is without the approval of the third respondent. Therefore, in all aspects, awarding of the contract to the seventh respondent suffers."

(vi) Further, the learned Single Judge directed the official respondents to forthwith stop cutting, removal and transportation of the wind fallen rubber trees by the appellant/seventh respondent and further held that the act of the sixth and seventh respondents/fifth and sixth respondents in dealing with the matter was illegal and unlawful and allowed the Writ Petition.

(vii) Aggrieved over the order passed by the learned Single Judge, the appellant/seventh respondent had preferred the present Writ Appeal.

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

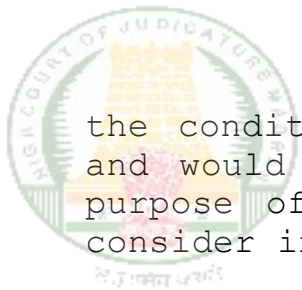
5. It is to be noted that the tender was only for 423 wind fallen rubber trees and the period of contract is one month from the date of execution of agreement and that was issued on 18.04.2013. As already stated, tender was only in respect of wind fallen rubber trees, by passage of time, the trees would have decayed. Hence, on an earlier occasion, when the matter came up for hearing, the learned Special Government Pleader was directed to submit a report on the same.

6. In view of the same, the learned Special Government Pleader appearing for the respondents 2 to 6 took time to get instructions.

7. Today, when the matter is taken up for hearing, the learned Special Government Pleader, produces a letter issued by the Managing Director, Arasu Rubber Corporation Limited, Kodayar Division, dated 01.10.2018.

8. In the letter, it is stated that originally there were 423 wind fallen rubber trees, of which, 223 were removed by the appellant/seventh respondent. It is further stated that in view of the order passed in the Writ Petition, there was stoppage of work and the balance 200 trees could not be removed by the appellant/seventh respondent and it is stated that the trees have decayed now and it cannot be utilised.

9. The order in the Writ Petition was passed on 30.08.2013 and the appeal was moved only in the year 2018. The appellant/seventh respondent seems to have removed 223 trees from the date of award of tender to the date of receipt of stay order and the balance 200 trees could not be removed and it is reported by the Managing Director, Arasu Rubber Corporation Limited, Kodayar Division that



the condition of 200 wind fallen rubber trees are fully decayed and would not be able to remove from the field. Therefore, the purpose of contract itself is defeated and there is nothing to consider in this matter.

10. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Chairman,
Arasu Rubber Corporation Limited,
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5. The Divisional Manager,
Arasu Rubber Corporation Limited,
Kondayar Division, Kondayar,
Kanyakumari District.

+ 2 CC TO Mr.M.PALA RAMASAMY, ADVOCATE IN SR No. 88723 & 88649
+ 1 CC TO M/s.ISAAC CHAMBERS, IN SR No. 88621
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 88711

PS

TE/RP/SAR-4 : 29/10/2018 : 5P/10C

W.A(MD) No.1249 of 2018
03.10.2018