

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.24399 of 2009
and M.P.No.1 of 2009

M/s.Aiswarya Exports,
Represented by
R.Selvaraj, Proprietor,
No.187, SIDCO Industrial Estate,
Ambattur, Chennai - 600 098. ...Petitioner

Versus

- 1.The Principal Chief Conservator of Forests,
Panagal Buildings,
Saidapet, Chennai - 600 015.
- 2.The District Forest Officer,
Salem Division, Salem.
- 3.The District Forest Officer,
Tirupathur Division,
Tirupathur.
- 4.The District Collector,
Tiruvallur.
- 5.The Tahsildar,
Ambattur, Chennai - 600 053.
- 6.The Revenue Inspector,
Ambattur, Chennai - 600 053. ...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records on the file of the respondents relating to the order dated 03.11.2009 of the 5th respondent in R.C.No.11060/2004/A4 and quash the same.

For Petitioner : Mr.K.S.Natarajan

For Respondents: Mr.G.B.Rajesh
Government Advocate

O R D E R

This writ petition has been filed seeking to quash the entire proceedings passed by the 5th respondent in R.C.No.11060/2004/A4 dated 03.11.2009.

2.The petitioner had purchased 85.000 Mts of Sandalwood for Rs.5,18,39,000/- in the public auction held at Government Sandalwood Depot at Tirupattur on 19.06.1996.The petitioner had paid a sum of Rs.15,00,000/- towards 1/5th of the same amount and EMD on the date of auction. The sale was confirmed on 21.08.1996 and the confirmation order was also sent to the petitioner's firm. Thereafter, the petitioner's firm did not pay the balance amount within the stipulated time. Hence, the respondents issued notice to the petitioner to pay the balance amount. Aggrieved against the same, the petitioner has filed several writ petitions, which were dismissed. Thereafter, the sandalwoods of 85.000 M.Ts., were resold on different dates by the Government Sandalwood Depot, Tirupattur on different dates, wherein the Government suffered a loss of Rs.63,47,600/-. Therefore, the District Forest Office vide Ref.No.7976/96 S dated 30.04.01 asked the petitioner to remit Rs.63,47,600/- towards the loss to the Government. Despite several reminders and notices, the petitioner has not paid the said amount. Therefore, as per the Chief Conservator of Forests, Chennai, action was initiated to recover the the above loss amount through Revenue Recovery Act by the District Collector, Thiruvallur, through the 5th respondent viz., Tahsildar, Ambattur, who had issued proceedings in R.C.No.11060/2004/A4 on 03.11.2009 directed the 6th respondent viz., Revenue Inspector, Ambattur, to recover the amount due from the petitioner i.e, Rs.53,64,600/- due to the Government Sandalwood Depot, Sathyamangalam and Rs.63,47,600/- due to the Government Sandalwood Depot,Tirupattur totally a sum of Rs.1,17,12,200/-. Aggrieved by the same, the petitioner has filed the present petition.

3.Heard both sides.

4.The learned counsel for the petitioner submitted that the 4th respondent viz.,Tahsildar, Ambattur in his proceedings dated 19.02.2007 in Na.Ka.11060/2004/A4 has directed the Revenue Officer, Ambattur to recover an amount of Rs.9,43,450/- and Rs.53,64,000/- towards the loss sustained by the Government due to resale of goods purchased by the petitioner herein. The learned counsel further submitted that as per the notice, the petitioner has paid Rs.9,43,270/- through demand draft on four installments and the receipt was also issued by 4th respondent for the same. It is the averment of the petitioner that as to how the respondents arrived at an amount of Rs.53,64,000/- towards the loss to the Government. He further submitted the respondents have not detailed about how they arrived at Rs.53,64,000/- in any of their communications. According to the

petitioner the demand of Rs.53,64,000/- due to the 2nd respondent and Rs.63,47,6000/- due to the 3rd respondent without even furnishing the details as to how these amount are claimed to be due is an unsustainable one and accordingly, he prays to allow this petition.

5.The learned Government Advocate appearing for the respondents filed an counter affidavit filed by the 3rd respondent, wherein it is stated that an auction notice was published in part VI Section I of the Tamil Nadu Government gazette dated 22.05.1996 and the sale was held on 19.06.1996. The petitioner firm also participated in the above sale and purchased 85.000 M.Ts., of sandalwood for Rs.5,18,39,000/- and paid a sum of Rs.15,00,000/- towards 1/5th of sale amount and EMD on the date of auction. The sale was confirmed on 21.08.1996 and confirmation order was also sent to the petitioner's firm and acknowledged the receipt on 24.08.2006. But, even after repeated reminders and notice issued to the petitioner firm, they had not responded to any of the notice issued and aggrieved by the action of the respondents, the petitioners firm filed a case vide W.P.No.18030/98 and the same was dismissed by this Court on 13.07.1999. Thereafter the petitioner firm filed several writ petition and all are dismissed. Thereafter, the sandalwood was resold on different dates and amount fetched through the resale is as follows:

Value of 85.000 MTs on 19.6.96 i.e., date of first sale	Rs.5,18,39,000
Value of 85.000 MTs resold on various dates	Rs.4,54,91,400

Net Government loss	Rs. 63,47,600

Hence, the petitioner firm was asked to remit the above Government loss amount of Rs.63,47,600/- vide District Forest Officer ref.No.7976/96 S dtd.30.04.01. Despite several reminders, the petitioner firm has failed to remit the Government loss amount and hence as per directions given by the Principal Chief Conservator of Forests, Chennai vide ref.No.D2/70016/05 dated 12.3.07 action was initiated to recover the above loss amount of Rs.63,47,600/- through Revenue Recovery Act by the District Collector, Tiruvallur. It is further submitted that once the purchaser i.e., petitioner firm had accepted and signed the sale notice conditions, they are bound to abide by the rules inforce. But, here the petitioner firm had remitted 25% of dues and failed to remit the balance dues. It is further submitted the petitioner firm had already read and accepted sale notice condition, wherein it was clearly stated in condition No.9 that any loss sustained by placing the wood on resale would have to be borne by the purchaser himself. It is

the responsibility of the purchaser to remit the dues in time and to lift the sandalwood within the time stipulated. The District Forest Officer, Sathyamangalam had acted only as per the accepted sale notice condition and rules in force.

4.The learned Government Advocate appearing for the respondents reiterated the submissions made in the counter affidavit and submitted that the petitioner is responsible for the loss incurred to the Government exchequer and the respective Forest Division invoking 12(ii) of the Sandalwood Auction Sale Conditions in which the clause is very clear that the District Forest Officer without any further reference to the purchaser may resell the wood in question at the risk of the purchaser, who shall be liable for any loss, but shall not be eligible for any profit which any arise on account of such resale. Likewise, the District Forest Officer can charge interest on every due. In the present case, the District Forest Officer has not imposed any interest however demanded the actual loss to the Government. The petitioner did not challenge the initial order of the Forest Divisional Officer, but only challenged the constitutional order, which is unsustainable one. Accordingly, he prays for dismissal of the the petition.

5.On perusal of the entire records, it is seen that the petitioner participated in the sandalwood sale auction and the petitioner is the successful bidder to the tune of Rs.5,18,39,000/- and paid Rs.15,00,000 towards 1/5th of sale amount and EMD on the date of auction. However, the petitioner did not pay the balance amount. The Government issued two G.Os., to enable the petitioner to pay the balance amount. Even thereafter, the petitioner did not pay the balance amount in order to avail the benefit extended by the Government. Thereafter a show cause notice was issued and the same was received by the petitioner firm and it is evidence from the lawyer's notice dated 30.01.2001. Admittedly, the petitioner challenged the revenue recovery proceedings, however not challenged the original proceedings initiated by the District Forest Officer, Salem Division, Salem. Without challenging the original order, challenging the subsequent order is unsustainable one and this Court is not inclined to entertain this petition. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal Chief Conservator of Forests,
Panagal Buildings,
Saidapet, Chennai - 600 015.

2.The District Forest Officer,
Salem Division,
Salem.

3.The District Forest Officer,
Tirupathur Division,
Tirupathur.

4.The District Collector,
Tiruvallur.

5.The Tahsildar,
Ambattur,
Chennai - 600 053.

6.The Revenue Inspector,
Ambattur,
Chennai - 600 053.

+1cc to Mr.K.S.Natarajan, Advocate, SR.No.63232

+1cc to the Special Govt.Pleader, Vide Sr.No.62950

W.P.No.24399 of 2009
and M.P.No.1 of 2009

Kak (28/09/2019)

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