HIGH COURT OF TRIPURA
AGARTALA

W.A No.25/2017

M/s. Fortuna Green field Pvt. Ltd., a company registered under the Companies Act, 1956, having its registered office at 8/1, Lal Bazar Street, Bikanir Building, 3rd Floor, Middle Block, Kolkata.

…… *Appellant(s).*

Vs.

1. The State of Tripura represented by the Chief Secretary to the Government of Tripura, New Secretariat, P.O.- New Capital Complex, Agartala, West Tripura.

2. The Principal Chief Conservator of Forest, Government of Tripura, Aranya Bhawan, Pandit Nehru Complex, P.O.-Kunjaban, Agartala-799006.

3. The Conservator of Forest, Udaipur Forest Division, Government of Tripura, P.O.- Udaipur, District-Gomati.

4. The Sub-Divisional Forest Office, Udaipur Forest Division, Government of Tripura, P.O.- Udaipur, District-Gomati.

…… *Respondent(s).*

W.A No.26/2017

M/s. Fortuna Agro Plantations Ltd., a company registered under the Companies Act, 1956, having its registered office at 8/1, Lal Bazar Street, Bikanir Building, 3rd Floor, Middle Block, Kolkata.

…… *Appellant(s).*

Vs.

1. The State of Tripura represented by the Chief Secretary to the Government of Tripura, New Secretariat, P.O.- New Capital Complex, Agartala, West Tripura.

2. The Principal Chief Conservator of Forest, Government of Tripura, Aranya Bhawan, Pandit Nehru Complex, P.O.-Kunjaban, Agartala-799006.

3. The Conservator of Forest, Udaipur Forest Division, Government of Tripura, P.O.- Udaipur, District-Gomati.

4. The Sub-Divisional Forest Office, Udaipur Forest Division, Government of Tripura, P.O.- Udaipur, District-Gomati.

…… *Respondent(s).*

BEFORE

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

For Appellant(s) (In both the appeals)	:	Mr. D.K. Biswas, Advocate.
For Respondent(s) (In both the appeals)	:	Mr. D. Sarma, Addl. G.A.
Date of hearing and Judgment & Order	:	01.12.2020.
Whether fit for reporting	:	NO.

HIGH COURT OF TRIPURA

JUDGMENT AND ORDER (ORAL)

A. Kureshi, CJ.

These appeals arise out of common judgment of the learned Single Judge dated 30.01.2017 passed in W.P(C) No. 117/2016 & W.P.(C) No. 626/2015. Issues being common, these appeals would be disposed of by this common judgment. For convenience we record facts from W.A No. 26/2017 which arises out of W.P(C) No. 626/2015. Appellant Fortuna Agro Plantations Ltd. was the original petitioner. The petitioner was awarded a contract for purchase of specified quantity of wood by the Forest Department of State of Tripura pursuant to a tender process in which the petitioner was a successful bidder. In the course of execution of the contract dispute arose between the parties. The petitioner had previously approached the court by filing writ petition and writ appeal. Instead of approaching appropriate forum for damages in terms of the judgment in writ appeal, the

petitioner tried to amicably settle the disputes with the government. It appears that pursuant to such efforts, a meeting was held between the petitioner's representatives and the officials of the Forest Department, Government of Tripura on 11.04.2012, minutes of which were drawn which provided as under:

HIGH COURT OF TRIPURA

> *"The following official attended the meeting on behalf of the Forest Deptt.,*
>
> 1. *Dr. A.K. Gupta, Addl. PCCF.*
> 2. *Sri. P.K. Das, CF (TC)*
> 3. *Sri C.L. Das, Dist. F.O., South*
> 4. *Sri B.K. Agarwal on behalf of M/S FAPL, Kailashahar*
>
> *The following point discussed in the meeting*
>
> ***1. Delivery of timber against the deposited amount of Rs.5.00 lakhs:-***
> *As per work order issued in favour of M/S. Fortuna Agro Plantations Ltd., M/S Fortuna Green Fields Pvt. Ltd. vide letter No.12,649-58 & No.12,659-68 respectively, requested to deposited @Rs.2.50 lakhs each as advance DFO, Udaipur vide letter No.17,940 dated 18/01/2006 confirmed that Rs.2.50 + Rs.2.50 lakhs = Rs.5.00 lakhs has been deposited both the farm. It is decided that timber will be supplied from the existing old stock against the deposited amount subject to approval of the Govt.*
>
> ***2. Delivery of rest timber:-***
> *After deliberation it is decided that rest of the timber will be delivered from the present stock as per govt. approved rate and for talking outside the state export duty will be imposed as per offered by the both firm during the tender subject to approval of the Govt.*
>
> *Sri B.K. Agarwal requested PCCF, Tripura to allow him two days time for acceptance of the same offer and Sri Agarwal will submit the consent letter within two days. Accordingly, PCCF, Tripura allowed two days for submission of his consents.*
>
> *Meeting ended with thanks to the chair."*

[2] The petitioner, thereafter, wrote to the Principal Chief Conservator of Forest on 08.06.2012. After referring to a joint meeting

between the petitioner and the Forest Department, in the said letter it was further conveyed as under:

> *"After discussing the issue above, as requested, we summarize and present our offer as under:-*
>
> *1. The Forest Department shall deliver 1000 cubic meter good quality, Teak round timber logs, (against 682 cubic meter sawn timber) as per the upset price under the Tripura Government Notification No. F7(179)/For-FP-2001/PT-II/3511-760 dated 22.04.2006.*
>
> *2. Inter-state export duty shall be charged at the rate of 11% only.*
>
> *3. Rs.2,50,000 as deposited by the buyer as advance vide Demand Draft No. 46484 dated 10.01.2006 of Tripura Co-operative Bank shall be adjusted against the first delivery and thereafter all the materials shall be lifted after present measurement, joint signature on measurement list, payment of GP amount and after issuance of Transit Pass timber will be lifted.*
>
> *4. The delivery/lifting of timber by the seller and the buyer shall be completed within a period of 365 days from the date of receipt of the government's (forest department) approval on the proposal made by the buyer and or offer of timber made by forest department whichever is later.*
>
> *5. Priority for the allotment of wagon(s) for the despatch of sawn timber/moulding and beads for inter-state export as made out from above timber logs shall be given by the Forest Department.*
>
> *6. This offer is valid for 45 days from the date of this letter.*
>
> *7. No prejudice to either side for future course of action in case the offer is not accepted due to any reason whatsoever and in such circumstances the above offer shall be treated as null and void.*
>
> *We request you to kindly give your approval on our settlement offer as above at the earliest."*

[3] When the disputes were not resolved to the satisfaction of the petitioner, he filed the present fresh petition. Interestingly, in this petition his prayers were as under:

> *"(i) Issue a command or a Writ of Mandamus or appropriate command directing the Respondents to conclude the settlement between the parties dated 08.06.2012, and deliver the balance Timber (**969.637** cum) to the petitioner as per offer dated 08.06.2012 which was partly complied.*
>
> *(ii) Issue a Writ of Mandamus or appropriate command directing the Respondents to deliver the balance timber (**969.637** cum) to the petitioner as per offer dated 08.06.2012 which was partly complied."*

[4] The learned Single Judge in the impugned judgment noted that the petitioner was already supplied timber for the sum of Rs.5.00 lakhs already deposited earlier. However, with respect to the question of supplying remaining quantity of timber, the learned Single Judge held and observed as under:

> *"**6.** In respect of the other point as raised by Mr. Bhattacharji, learned counsel for the petitioner that the rest of the timber will be supplied to the petitioners at the government rate and the word 'government approved rate' as appearing in the minutes dated 11.04.2012 shall be understood as 'approved rate' as was existing on that date i.e. 11.04.2012, cannot be accepted by this court. None of the petitioners has made any averment in their writ petitions whether they have accepted the proposal recorded in the latter part of the minutes or not. The minutes do not constitute any contract, except that part of supplying timber against the deposits".*

[5] Having heard learned counsel for the parties and having perused documents on record, we find no force in the appeals. The disputes between the petitioner and the government were arising out of contractual relations. Resolution of any such disputes would require examination of disputed questions of facts for which ordinarily a writ petition would not be entertained. Further, after holding a meeting on 11.04.2012, the petitioner

itself wrote a letter to the department on 08.06.2012 and suggested the terms on which the petitioner was prepared to lift further quantity of timber. This was clearly in the nature of a counter offer. In fact, the petitioner itself has described the terms contained in the said letter dated 08.06.2012 as an offer. Very clearly thus, there was no final agreement on 11.04.2012 which can be termed as a contract between the parties. At any rate, the petitioner was not satisfied with the deliberations that must have taken place on 11.04.2012. It was precisely because of this reason, that the petitioner wrote to the department on 08.06.2012 and made a counter offer. It is not in the case of the petitioner that the department accepted this counter offer which then culminated into a binding contract between the parties. It is in this context that we must see the petitioner's prayer in the writ petition for a direction to be issued to the government for supplying timber on the terms contained in the said offer letter. Clearly, no such direction can be issued and correctly not issued by the learned Single Judge.

[6] In the result, appeals are dismissed.

(S.G.CHATTOPADHYAY),J **(AKIL KURESHI),CJ**

Rudradeep