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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2020

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.22990 OF 2010

ORDERS RESERVED ON 18.03.2020	ORDERS PRONOUNCED ON 05.06.2020
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M/s.Satya Exports,
Rep., by its Managing Partner,
Mr.K.Mahalingam,
No.54/29/1, 3rd Main Road,
Raja Annamalaipuram,
Chennai-600 028.

.. Petitioner

-vs-

1. The District Forest Officer,
Chengalput Division,
Kancheepuram.

2. The Principal Sessions Court,
Chengalput,
Acting as Tribunal under the Forest Act.

.. Respondents

Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records in Criminal Appeal No.111/08 dated 06.08.2010 passed by Principal Sessions Judge, Chengalpattu, acting as a Tribunal under the Forest Act confirming the confiscation order in S.T.O.R.No.2/1994-95 M, dated 25.01.2008 passed by the District Forest Officer, Chengalput, quash the same and further direct the 1st respondent to return and restore to petitioner the seized timber of 6370 kilo of sandal wood and 563 kilo of red sanders.

For Petitioner : Mr.T.Chezhiyan

For Respondents: R1 - Mr.M.Elumalai,
Government Advocate

: R2 - Court



ORDER

Heard Mr.T.Chezhiyan, learned counsel for the petitioner and Mr.M.Elumalai, learned Government Advocate for the first respondent.

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2.The petitioner, a partnership firm, has filed this writ petition challenging an order passed by the Principal Sessions Judge, Chengalput, in Criminal Appeal No.111/2008, dated 06.08.2010 in an appeal filed under Section 49D of the Tamil Nadu Forest Act, 1882 (hereinafter referred to as "the Act"). In terms of sub-Section (2) of Section 49D, the order of the District Judge under sub-Section (1) of Section 59D shall be final and shall be called in question by any Court of law. Thus, the petitioner having not been provided with any remedy under the Act, has filed this writ petition under Article 226 of the Constitution of India challenging the impugned order.

3.By the impugned order, the Order of Confiscation passed by the first respondent dated 25.01.2008 was confirmed. The petitioner was granted a possession licence by the District Forest Officer, Kancheepuram, for the period 1992-93 to possess 12,454 kgs of sandalwood. By letter dated 03.04.1993, the petitioner applied for renewal of the possession licence for the next year, viz., 1993-94 stating that they have retained the stock at Neelangarai, Chennai. However, the Forest Range Officer, Headquarters, Chennai, found that the petitioner had retained only 6185 kgs of sandalwood and called for an explanation with regard to the shortage of 6269 kgs. The petitioner filed a writ petition before this Court in W.P.No.2921 of 1994 in which, an averment was made that the shortage is due to theft in the godown and that they have lodged a complaint in the Thorapakkam Police Station. However, the Inspector of Police, Thorapakkam Police Station, by letter dated 20.03.1994, informed the Forest Ranger, Madras Headquarters Range, that no such complaint was received from the petitioner. Ultimately, the writ petition was dismissed by directing orders to be passed in accordance with law. An opportunity was granted to the petitioner by memo dated 20.07.1994 to substantiate their claim and explain their shortage.

4.According to the first respondent, the petitioner was unable to explain the shortage in spite of sufficient opportunity. The respondent-Department stated that the petitioner had violated the Tamil Nadu Forest Act, 1882, the Tamil Nadu Sandalwood Transit Rules, 1967, and the Tamil Nadu Forest Rules, 1970. The criminal proceedings initiated against the petitioner was pending for several years and ultimately, the petitioner has been acquitted by giving benefit under Section 256 CrPC.



5. So far as the proceedings initiated by the first respondent is concerned, it culminated in an order of confiscation dated 05.09.2001. The petitioner challenged the said order by filing a writ petition in W.P.No.24255 of 2006. The Court found that no show cause notice was issued to the petitioner before order of confiscation was passed. Therefore, by order dated 22.09.2006, the confiscation order was set aside and show cause notice was directed to be issued and thereafter, orders to be passed. The petitioner filed writ appeal in W.A.No.1407 of 2006 against the said order and the Hon'ble First Bench did not interfere with the directions issued by the learned Writ Court. An observation was made that it will be open to the petitioner to approach the authorities for release of the goods on furnishing bank guarantee. Though a representation was made by the petitioner on 04.12.2006, no order was passed in favour of the petitioner releasing the goods on furnishing bank guarantee. Thereafter, the first respondent has passed the Order of Confiscation dated 25.01.2008, against which the petitioner filed an appeal to the Principal Sessions Court. In the appeal petition, the petitioner contended that the first respondent has no jurisdiction to pass the Order of Confiscation after the criminal case, which was registered against the petitioner ended in acquittal.

6. It was further contended that Section 49A of the Act would be applicable only if a forest offence is believed to have been committed in respect of any scheduled timber, which is the property of the Government and the first respondent is attempting to grab the timber, which is the private asset of the petitioner and not a Government property. Further, it was contended that the objections filed by the petitioner were not considered in a proper manner. The Principal Sessions Court, after considering the factual aspects and referring to the relevant Rules, dismissed the appeal and confirmed the order of confiscation. A finding has been rendered that the petitioner has produced no documents to substantiate his case. Aggrieved by such order, the present writ petition has been filed.

7. The sheet anchor of the submission of the learned counsel for the petitioner is to convince this Court that the property is the petitioner's property. In this regard, the learned counsel has referred to certain documents, viz., the certificate of origin dated 05.07.1988, export way permit dated 13.09.1991, licence granted by the District Forest Officer dated 14.10.1991, possession licence dated 15.02.1991, and notice issued by the District Forest Officer, Tirupattur Division, demanding sales tax in respect of purchase effected by Tmt.Sumathi, wife of M.Mahalingam, the Managing Partner of the petitioner. These documents are referred to by the learned counsel for the



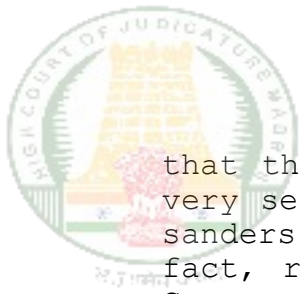
petitioner to substantiate the contention that what has been seized is not the property of the Government.

8. In a writ proceedings, this Court cannot for the first time, consider all these documents. That apart, none of these documents pertain to the shortage in quantity of the sandalwood, which was provided under the possession licence. As pointed out earlier, the Principal Sessions Court has recorded a finding that the petitioner did not produce any documents.

9. To be noted that the petitioner set up a false case at the first instance alleging that there was a shortage on account of theft in their godown and stated that they have lodged a complaint before the Thorapakkam Police Station. The Inspector of Police by communication dated 20.03.1994, addressed to the Forest Ranger stated that no such complaint/report has been received from the petitioner. Therefore, the petitioner is guilty of having made a false statement before the authorities. The Assistant Conservator of Forests and the Forest Ranger, who conducted the investigation on 31.07.1993 reported there was shortage. The petitioner did not offer any explanation, but chose to approach the Court, which directed the petitioner to approach the authorities.

10. After the Order of Confiscation dated 05.09.2001 was passed, the petitioner did not file an appeal, but chose to file a writ petition in W.P.No.24255 of 2006 on the ground that he did not have sufficient opportunity and no show cause notice was issued. This was accepted and the order was set aside and the matter was remanded to the authority for issuing show cause notice and taking a fresh decision on merits. Not satisfied with the direction, the petitioner preferred writ appeal in W.A.No.1407 of 2006 and the Hon'ble First Bench by judgment dated 13.11.2006 did not interfere with the direction issued by the learned Writ Court.

11. With regard to the contention raised by the petitioner that the authority can proceed only under Section 5 of the Act and the provision under Section 49A is not available to the authority was not decided by the Hon'ble First Bench, but permitted the petitioner to agitate all issues before the authorities and also made an observation that if the concerned authority decides against the petitioner, he has got a remedy of appeal. Thus, neither in the confiscation proceedings, nor before the Principal Sessions Court, the petitioner has been able to explain the shortfall. Furthermore, the authority found



that the petitioner had not accounted for the stock, which is a very serious offence. Apart from sandalwood, there were also red sanders logs. Thus, the authority taking into consideration the fact, rightly took a decision that the property is that of the Government, and rightly the power under Section 49A was exercised.

12. Furthermore, in terms of Section 41(1) of the Act, when there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, proceedings to seize and confiscate can be resorted to. Apart from that, without a valid permit as prescribed under the Tamil Nadu Sandalwood Transit Rules, 1967, no person can move or export the sandalwood. Thus, the petitioner having miserably failed to establish any of the factual details either before the authority or before the Principal Sessions Court, cannot now contend that there are few documents in his favour and the same should be taken note of.

13. As mentioned above, the documents such as certificate of origin or export way permit, etc., will in no manner assist the case of the petitioner. The possession licence was not renewed and the renewal licence application was rejected. The petitioner was not able to explain the shortage. Their submission that there was theft in their godown was found to be a false statement. Therefore, this Court finds no grounds to interfere with the order passed by the Principal Sessions Court.

14. Accordingly, the writ petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

abr

To

1. The District Forest Officer,
Chengalput Division,
Kancheepuram.



2. The Principal Sessions Court,
Chengalput,
Acting as Tribunal under the Forest Act.

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CS/13/07/2020