



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.7599 of 2019

And

W.M.P.No.8234 of 2019

M/s.Marg Swarnabhoomi Port Private Limited
Represented by its Authorised Signatory

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Department of Highways and Minor Ports (HN2),
Fort St.George,
Chennai.

2.The Principal Secretary / Vice Chairman
And Chief Executive Officer
Tamilnadu Maritime Board,
171, South Kesavaperumalpuram,
Off Greenways Road,
Raja Annamalaipuram,
Chennai - 600 028.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for records and quash the impugned de-notification G.O.(4D) No.1, Highways and Minor Port (HM1) published in the Gazatte No.17 on 25.04.2018 of Mugaiyur Port, Kancheepuram District issued by the first respondent as illegal, ultra vires and against the principles of natural justice and consequently direct the respondents to permit the petitioner to develop the Mugaiyur Port, Kancheepuram District.

For Petitioner : Mr.D.Baskar

For Respondents : Mr.M.R.Gokul Krishnan
Government Advocate



O R D E R

The petitioner has filed this petition seeking issuance of Writ of Certiorarified Mandamus calling for records and to quash the impugned de-notification G.O.(4D) No.1, Highways and Minor Port (HM1) published in the Gazette No.17 on 25.04.2018 of Mugaiyur Port, Kancheepuram District issued by the first respondent as illegal, ultra vires and against the principles of natural justice and to consequently direct the respondents to permit the petitioner to develop the Mugaiyur Port, Kancheepuram District.

2.The case of the petitioner is that the petitioner is a company registered under the Companies Act, 1956 and is a subsidiary company of M/s.MARG Limited, Chennai. During the year 2008, the respondent made a proposal to establish a captive ship repair facility at Mugaiyur in Kancheepuram District and by letter dated 11.02.2009, the second respondent accorded principle approval to the petitioner for establishment of captive ship repair facility at Mugaiyur in Kancheepuram District. The Government vide G.O.Ms.No.224, Highways and Minor Ports (HN2) Department, dated 23.11.2009, declared the Mugaiyur Port, Kancheepuram District as Minor Port and thereby extended the provisions of Indian Ports Act, 1908 and the Tamilnadu Maritime Board Act, 1995 with port limits.

3.The further case of the petitioner is that the petitioner entered into a license agreement dated 10.09.2010 with the second respondent for use of port land and as per the letter of approval dated 11.02.2009 granted by the second respondent, the petitioner has to obtain Environmental Impact Assessment Report from the appropriate Authorities and the petitioner also applied for the same and by letter dated 17.05.2013, the terms of reference for the preparation of Environmental Impact Assessment Report was accorded. In the meanwhile, vide letter dated 05.01.2012, the second respondent called upon the petitioner to show cause as to why the approval should not be withdrawn and the petitioner gave a detailed reply on 25.01.2012.

4.The further case of the petitioner is that based on the terms of reference, the petitioner has to conduct environmental studies and the said facts were appraised to the second respondent by letter dated 07.11.2013, however, vide letter dated 04.03.2014, the second respondent cancelled the permission granted to the petitioner. Aggrieved by the same, the petitioner filed O.S.No.6153 of 2014 before the City Civil Court, Chennai and the learned V Assistant Judge, vide judgment dated 23.03.2017 dismissed the suit. Challenging the same, the petitioner filed A.S.No.291 of 2018 before the III Additional City Civil Court, Chennai and the same is pending. Whiles, the first respondent has issued a Notification in the Government



Gazette dated 25.04.2018, de-notifying the port and withdrawing the provisions under the Indian Ports Act, 1908. Challenging the same, the present writ petition has been filed.

5.The learned counsel appearing for the petitioner would submit that without following the due process of law and in violation of the principles of natural justice, the impugned order was passed. The learned counsel further submitted that before passing the impugned order, the petitioner was not given opportunity of hearing, which is in clear violation of principles of natural justice and further as against the dismissal of the suit filed by the petitioner the petitioner filed appeal before the III Additional City Civil Court, Chennai and the same is pending. Without waiting for the order from the lower Appellate Court, the respondent hurriedly passed the impugned order, which is not sustainable.

6.The learned Government Advocate appearing for the respondents would submit that the petitioner company had to pay their annual licence fee on or before 14th of February every year, however, the outstanding dues mounted to Rs.17,65,136/- as on 31.03.2014 and despite various reminders sent to the petitioner company, there was no response. He would further submit that the outstanding amount as on 31.07.2014 being Rs.21,05,375/-, the same was discussed in the Board of Second respondent in its meeting held on 03.07.2014 and it was resolved to initiate recovery proceedings as per the Revenue Act and in pursuance of the same, the first respondent issued the impugned order which is sustainable one and it needs no interference.

7.The learned Government Advocate appearing for the respondents would further submit that though appeal has been filed by the petitioner and the same is pending, there is no interim order as against the respondent. In the absence of any interim order, the respondent has the power to pass the impugned order.

8.Heard the submissions made by the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents.

9.The petitioner has filed this writ petition only on the ground that the respondent has passed the impugned order without providing any opportunity to the petitioner which is in violation of clause 15 of the licence agreement dated 10.09.2010. However, on perusal of the records it is known that the petitioner company was accorded in-principle approval by the second respondent for establishment of captive ship repair facility at Mugaiyur, Kancheepuram District vide letter dated 11.02.2009 and the petitioner company entered into an agreement with the second respondent for allotment of land measuring 15026



sq.meters for 30 years with effect from 15.02.2010.

10.The petitioner company paid the licence fee regularly till 29.04.2011 from the date of execution of the licence agreement i.e., 10.09.2010. The petitioner company has to pay the annual licence fee on or before 14th of February every year and the second respondent may charge and claim the penal charges at the rate of 12% per annum or the rate as may be revised from time to time based on the prevailing rate on the outstanding licence fee. However, the outstanding dues mounted to Rs.17,65,136/- as on 31.03.2014.

11.The 72nd Board meeting was held on 26.12.2011. The Board discussed the subject in detail and observed that the development of captive ports like Mugaiyur Port by M/s.Marg Swarnabhoomi Port Private Limited had not taken place despite the notification of the port limits. Pursuant to the same, notice to show cause as to why the approval shall not be withdrawn on 05.01.2012 issued by the second respondent was communicated to the petitioner. In response to the same, the petitioner company vide letter dated 27.01.2012 informed that they have taken all requisite actions, however, they are yet to be accorded the clearance for their Terms of Reference by Ministry of Environment and Forests and Climate Change and the subsequent environmental clearance for the project.

12.The Board conducted its 73rd meeting on 30.03.2012 and it resolved to extend the time period upto 31.12.2012 for achieving financial closure for their project, failing which the approvals/ permissions so far granted may be reviewed/ revoked and the same was communicated to the petitioner company vide second respondent's letter dated 26.04.2012, for which, the petitioner company vide letter dated 05.10.2012 and 23.11.2012 informed that on receipt of the necessary statutory clearances including from Tamil Nadu Pollution Control Board, they shall be able to secure the financial closure for the project.

13.The extension of time limit for achieving financial closure was placed before the Board in the 76th meeting held on 27.03.2013 and the Board resolved to the time period upto 30.06.2013 for achieving financial closure and the second respondent vide letter dated 16.05.2013 informed the petitioner company to achieve financial closure and settle all the dues to Tamil Nadu Maritime Board before 30.06.2013. Since the petitioner company did not make any progress on the development of Mugaiyur Port, the Board in its 78th meeting held on 26.09.2013 critically reviewed the status of the captive port and further time was extended upto 31.12.2013 to achieve financial closure and settle all the dues.



14. Even thereafter the petitioner company did not achieve the financial closure and the same was reviewed by the Tamil Nadu Maritime Board in its 80th meeting held on 27.02.2014 and it was resolved that all the approvals/ permissions granted to the company for developing Mugaiyur Port and the relevant land lease agreement entered into with the company shall stand cancelled. The said resolution was communicated to the petitioner company on 04.03.2014, however, the petitioner company has not responded to the letters.

15. The outstanding amount as on 31.07.2014 being Rs.21,05,375/, the same was discussed in the Board of Second respondent in its 81st meeting held on 03.07.2014 and it was resolved to initiate recovery proceedings as per the Revenue Recovery Act and also to initiate legal action for the recovery of dues/ arrears to Tamil Nadu Maritime Board.

16. The above said facts clearly disclose that the petitioner company was given fullest opportunity for achieving financial closure as per clause 15 of the licence agreement dated 10.09.2010 only six months notice is required, however, the second respondent issued show cause notice on 05.01.2012 and passed the impugned cancellation order only on 04.03.2014. Hence all the opportunity was provided to the petitioner company. Even then, the petitioner did not come forward to complete the project by achieving the financial closure. This Court do not find any violation of principles of natural justice in the present case. Hence, the relief sought for by the petitioner cannot be considered.

17. The writ petition is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Secretary to Government,
Department of Highways and Minor Ports (HN2),
Fort St. George,
Chennai.



2.The Principal Secretary / Vice Chairman
And Chief Executive Officer
Tamilnadu Maritime Board,
171, South Kesavaperumalpuram,
Off Greenways Road,
Raja Annamalaipuram,
Chennai - 600 028.

+1cc to Mr.D.Baskar, Advocate SR. No.58331
+1cc to Government Pleader SR. No.58506

W.P.No.7599 of 2019
And
W.M.P.No.8234 of 2019

AD (CO)
PR (14/12/2021)