IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2021

DELIVERED ON : 07.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.27566, 27642, 27648, 27572, 27653, 27656 27657 of 2019
& 7584 & 8051 of 2020
and Connected Miscellaneous Petitions

M/S.RAS TURBO PVT. LTD.,
REPRESENTED BY ITS GENERAL MANAGER – MAHENDRA CHOWDHARY,
B-101, OPP. M1 WARE HOUSE,
GATE NO.10, SECTION III, CHENNAI PORT TRUST,
CHENNAI – 600 009.
... PETITIONER IN W.P.NO.27566 OF 2019

M/S.ROYAL TECH MARINE ENGINEERS PVT. LTD.
REP. BY ITS DIRECTOR S.JAYAPRAKASH,
NO.20, II FLOOR, SECOND LINE
BEACH ROAD, CHENNAI-600 001.
...PETITIONER IN W.P.NO.27642 OF 2019

M/S.HEXXON MARITIME SERVICES
REP. BY ITS MANAGER MR.JOHN BOSCO,
60 RAJAJ SALAI, CHENNAI-600 001.
... PETITIONER in WP No.27648 of 2019

M/S. CHIDAMBARAM SHIPCARE PV T. LTD.
REPRESENTED BY ITS DIRECTOR
MR. RAMDAS S. IYER, 38, FIRST FLOOR,
SECOND LINE BEACH,
CHENNAI 600 001. ... PETITIONER in WP No.27572 of 2019

M/S.SHRI SANGEETHAA LOGISTICS,
REP. BY ITS PROPRIETOR MR.N.S.SIDHARRTHAN,
NO.1 OLD SICAL PLOT FIRE FIGHTING ROAD,
INSIDE CHENNAI HARBOUR, CHENNAI-600 009.
... PETITIONER in WP No.27653 of 2019

M/S.HINDUSSTHAN MARINE ENGINEERING WORKS,
REP. BY ITS PROPRIETOR
MR.N.S.SIDHARRTHAN,
NO.1 OLD SICAL PLOT FIRE
FIGHTING ROAD, INSIDE CHENNAI, HARBOUR,
CHENNAI-600 009. ... PETITIONER in WP No.27656 of 2019

M/S.CHOUDARY TECHNICAL SHIP SERVICES PVT. LTD.
REP. BY ITS GENERAL MANAGER,
M.MURUGAN 72, MOORE STREET,
2ND FLOOR ROOM NO.3, CHENNAI-600 001.
... PETITIONER in WP No.27657 of 2019

M/S.HINDUSTHAN MARINE ENGINEERING WORKS,
REPRESENTED BY ITS PROPRIETOR
N.S.SIDHARRTHAN NO.1, OLD SICAL PLOT FIRE
EIGHTING ROAD, CHENNAI HARBOUR,
CHENNAI 600 009.
... PETITIONER in WP No.7584 of 2020

M/S.RAS TURBO PVT. LTD.
REP BY ITS GENERAL MANAGER,
MR. MAHINDRACHOWDHARY B101 OPPOSITE M-1,
WARE HOUSE, GATE NO.10, SECTION -III,
CHENNAI PORT TRUST, CHENNAI 600 009.
... PETITIONER in WP No.8051 of 2020

vs.

1.THE CHAIRMAN,
CHENNAI PORT TRUST,
CHENNAI - 600 001.

2.TRAFFIC MANAGER,
CHENNAI PORT TRUST,
CHENNAI - 600 001. ...RESPONDENTS IN ALL CASES

Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus,

Prayer in W.P.No.27566 of 2019:

to call for the records of the impugned proceedings dated 05.08.2019 in Letter No.C3/174/2013/T, on the file of the second respondent and to quash the said impugned order.

Prayer in W.P.No.27642 of 2019:

to call for the records of the impugned proceedings dated 05.08.2019 in Letter No.C3/0056/2017/T on the file of the second Respondent and to quash the said impugned order being in derogation of the statutory provisions and consequentially direct the respondents to call for e-tender permitting the petitioner to participate for the open space allotment and bid for the same.

WP No.27648 of 2019:

to call for the records of the impugned proceedings dated 05.08.2019 in Letter No.C2(b)/855/13/T on the file of the second Respondent and to quash the said impugned order being in derogation of the statutory provisions and consequentially direct the respondents to call for e-tender permitting the petitioner to participate for the open space allotment and bid for the same.

WP No.27572 of 2019:

to call for the records of the impugned proceedings dated 05.08.2019 in Letter No.C5 / 909 / 2013 / T on the file of the second Respondent and to quash the said impugned order, being in derogation of the statutory provisions and consequentially direct the Respondents to call for e- tender permitting the petitioner to participate for the open space allotment and bid for the same.

WP No.27653 of 2019:

to call for the records of the impugned proceedings dated 06.08.2019 in Letter No.C1/1178/2013/T on the file of the second Respondent and to quash the said impugned order being in derogation of the statutory provisions and consequentially direct the respondents to call for e-tender permitting the petitioner to participate for the open space allotment and bid for the same.

WP No.27656 of 2019:

to call for the records of the impugned proceedings dated 05.08.2019 in Letter No.C2(b)/1321/13/T on the file of the second Respondent and to quash the said impugned order being in derogation of the statutory provisions and consequentially direct the respondents to call for e-tender permitting the petitioner to participate for the open space allotment and bid for the same.

WP No.27657 of 2019:

to call for the records of the impugned proceedings dated 05.08.2019 in Letter No.C5/962/2011/T on the file of the second Respondent and to quash the said impugned order, being in derogation of the statutory provisions and consequentially direct the respondents to call for e-tender permitting the petitioner to participate for the open space allotment and bid for the same.

WP No.7584 of 2020:

Calling for the records of the second Respondent in his impugned order bearing No.C4/Legal/WPs/2009/T, dated 04/2020 and quash the same and directing the respondents to consider and pass appropriate orders on the representation of the Petitioner dated 30.03.2020 sent to the respondents Via email as per the guidelines duly issued by the Ministry of Sipping dated 31.03.2020 in the proceeding No. PD-14300/4/2020-9D VII within a time frame fixed by this Hon'ble court and thus render justice.

WP No.8051 of 2020:

Calling for the records of the 2nd respondent in his impugned Rent Claim Advice dated 31/03/2020 vide No.5/2020/04/3235 and the Quash the same and directing the respondents to avail the benefit of exemption in paying the penalty charges as per the guidelines duly issued by the Ministry of Shipping dated 31/03/2020 in the proceedings No.Pd 14300/4/2020 - PD VII within a time frame fixed by this Honourable Court.

For Petitioners in
W.P.Nos.27566 of 2019 &
8051 of 2020 : Mr.G.Ilamurugu

For Petitioners in
W.P.Nos.27572, 27648 &
27657 of 2019 : Mr.Om Prakash, Senior Counsel,
for Mr.M.Suresh

For Petitioner in
W.P.No.27642 of 2019: Mr.C.Kanagaraj

For Petitioners in
W.P.Nos.27653, 27656
of 2019 &
7584 of 2020 : Mr.V.Raghavachari

For Respondents in all W.Ps. : Mr.R.Sankaranarayanan,
Additional Solicitor General,
Assisted by,
MS.Madhuri Dhonti Reddy

O R D E R

The petitioners are Ship repairers who were allotted various open spaces of different dimensions in the Chennai Port Trust area by the respondents for the purpose of assisting the ships for their repairing needs in the Chennai Port. All the petitioners are aggrieved by the impugned letter dated 05.08.2019 issued to each one of them by the respondents informing them that

(a) The allotment will not be extended for any further period beyond 30.09.2019

(b) They have to remove the workshop structures erected in the allotted area.

(c) Vacate and surrender the unpaved land in the same original condition on or before 30.09.2019 and on failure to do so, they will be treated as unauthorized occupants and penalty charges will be levied at three times the normal fee for first 3 months, five times upto 7 months and thereafter ten times from 8^{th} month onwards.

2. All the petitioners have challenged the impugned letters dated 05.08.2019 by stating the following reasons:

(a) The land allotment in the Port area to each of the petitioners was earlier regulated by the respective allotment letters issued by the Chennai Port. Thereafter, the terms and conditions of the allotment was brought under a statutory regime namely, the Tariff Authority of Major Ports (TAMP) which fixes the scale of rates for the petitioners and other occupants of Port property. According to them, now the allotments are regulated by the Land Policy Guidelines issued by the Ministry of Ports, Government of India, 2014. Under the said guidelines, according to the petitioners, it was made mandatory that Port areas are to be leased out for major operations and for others it can only be by way of short-term license and the same has to be done through a transparent public auction. According to the petitioners, while laying the said Policy, the rights of existing allottees was protected by specifying the first right of refusal on the basis of auction and the highest bid and further on being unsuccessful, the superstructures to be compensated as valued by an Independent Valuer agreed to by all the parties, and the Port Authorities have to formulate their own guidelines by a board decision on the basis of such resolution. According to the petitioners, the Land Policy Guidelines of Major Ports, 2014 is the present statutory regime and without adhering to the same, the second respondent arbitrarily and in violation of principles of natural justice has issued the impugned communication dated 05.08.2019.

3. W.P.No.27572 of 2019 has been filed by M/s.Chidambaram Shipcare Pvt. Ltd., W.P.No.27657 of 2019 has been filed by M/s.Choudary Technical Ship Services Pvt. Ltd., W.P.No.27648 of 2019 has been filed by M/s.Hexxon Maritime Services, W.P.No.27642 of 2019 has been filed by M/s.Royal Tech Marine Engineers, W.P.No.27653 of 2019 has been filed by M/s.Shri Sangeethaa Logistics, W.P.No.27656 of 2019 has been filed by

M/s.Hindusthan Maritime Engineering Works and W.P.No.27566 of 2019 has been filed by M/s.Ras Turbo Pvt. Ltd, all challenging a similar communication dated 05.08.2019 received from the second respondent referred to supra. Apart from challenging the communication calling upon the petitioners to pay penalty and vacate the premises, M/s.Hindusthan Marine Engineering Works has filed W.P.No.7584 of 2020 and M/s.Ras Turbo Pvt. Ltd. has filed W.P.No.8051 of 2020 challenging a) the rejection of the respondent by its order dated 04/2020 their request for granting exemption from payment of charges due to Covid-19 lockdown and b) the order confirming the rent claim advices dated 31.03.2020 calling upon them to pay the penalty charges for the occupation of the premises in the Port Trust area. According to M/s.Hindusthan Marine Engineering Works and M/s. Ras Turbo Pvt. Ltd., the levy of penalty is against the guidelines issued by the Central Government and State Government which grants exemption for collection of any penal charges during the period of lockdown due to Covid-19 pandemic.

4. Heard Mr.Omprakash, learned Senior Counsel representing Mr.M.Suresh, learned counsel for the respective petitioners in W.P.No.27572 of 2019, W.P.No.27657 of 2019 and W.P.No.27648 of 2019, Mr.V.Raghavachari, learned counsel appearing for the petitioner in W.P.Nos.27653 and 27656 of 2019 and W.P.No.7584 of 2020, Mr.C.Kanagaraj, learned counsel appearing for the petitioner in W.P.No.27642 of 2019, Mr.G.Ilamurugu, learned counsel appearing for the petitioner in W.P.Nos.27566 of 2019 & 8051 of 2020 and Mr.R.Shankaranarayanan, learned Additional Solicitor General appearing for the respondents.

5. Mr.Om Prakash, learned Senior Counsel representing Chidambaram Ship care Pvt. Ltd., Choudary Technical Ship Services Pvt. Ltd. and Hexxon Maritime Service who are the petitioners in W.P.Nos.27572, 27657 & 27648 of 2019 respectively drew the attention of this Court to Section 35(2)(l) of the Major Port Trusts Act, 1963 and would submit that the space allotted in the Port Trust area has been allotted by the Chennai Port Trust exercising power under Section 35 of the Major Port Trusts Act, 1963. He also the drew the attention of this Court to Section 36 of the said Act and would submit that instead of Chennai Port Trust doing the work on its own, it has entrusted the ship repairing work for the ships that arrive at Chennai Port to the respective petitioners and other repairers and hence the respective petitioners can be evicted only by following the statutory procedure contemplated under the Major Port Trusts Act, 1963.

6. Mr.Omprakash, learned Senior Counsel also drew the attention of this Court to the allotment letters issued by the Chennai Port Trust, allotting spaces in the Port Trust area to

the respective petitioners and other ship repairers and would submit that initially allotment was made in respect of open spaces. He also drew the attention of this Court to a letter dated 26.08.2019 sent by the Chennai Port Trust to the respective petitioners and would submit that Chennai Port Trust has granted approval for construction of superstructures by the respective petitioners at their cost.

7. Mr.Omprakash, learned Senior Counsel would submit that the petitioners have invested huge amount of money subsequent to the permission granted by the Chennai Port Trust for putting up the superstructure at the respective petitioners cost. He then drew the attention of this Court to a letter dated 27.12.2018 sent by the second respondent to the respective petitioners informing them that the Chennai Port Trust has decided to allot all areas through E-tender cum auction as per the Land Policy Guidelines, 2014 (PGLM 2015).

8. Learned Senior Counsel would point out that Chennai Port Trust has acknowledged the fact that Land Policy Guidelines, 2014 will henceforth be adopted and not the terms and conditions of the allotment. Learned Senior Counsel also drew the attention of this Court to the communication dated 22.01.2019 sent by the petitioner to the Traffic Manager, Chennai Port informing him that the petitioner has built a new workshop in the Port area at a cost of Rs.45 lakhs.

9. Mr.Om Prakash, learned Senior Counsel representing Chidambaram Ship care Pvt. Ltd., Choudary Technical Ship Services Pvt. Ltd. and Hexxon Maritime Service who are the petitioners in W.P.Nos.27572, 27657 & 27648 of 2019 respectively, drew the attention of this court to the Land Policy Guidelines 2014 issued by the Ministry of Ports, Government of India which according to him, is the present statutory regime with regard to the land allotment at the Chennai Port. He would submit that originally lands were allotted under the allotment orders issued by Chennai Port which contained regulations for the said allotment and thereafter, the said regulations were brought under the statutory regime through scale of rates fixed by the Tariff Authority of Major Ports (TAMP) and presently, the land allotments are regulated by the Land Policy Guidelines, 2014. He would submit that the Land Policy Guidelines 2014 has been issued under section 111 of the Major Port Trusts Act and therefore, it has got statutory force. He drew the attention of this Court to various regulations under the Land Policy Guidelines and would submit that the rights of the existing allottees were sought to be protected under the said Guidelines by specifying the first right of refusal on the basis of auction and the highest bid and further on being

unsuccessful, the superstructures to be compensated as valued by an independent valuer.

10. The learned Senior Counsel then drew the attention of this Court to the impugned order directing the petitioners to remove the workshop structures erected in the allotted area and vacate and surrender the unpaved land on or before 30.09.2019 and on failure to do so, to pay a penalty. Referring to the same, the learned Senior Counsel would submit that the same has been issued in contravention of the Land Policy Guidelines, 2014 which protects the interest of the existing allottees like that of the petitioners by giving them an option to participate in the auction and get their allotment regularised.

11. According to him, the terms and conditions of the original allotment are no more applicable as the Land Policy Guidelines issued under Section 111 of the Major Port Trusts Act is the present statutory regime. According to him, contrary to the said guidelines, the impugned order has been passed. He would submit that the petitioners are in occupation of the property for long number of years and they have put up permanent superstructures spending enormous amount of money and only to protect those kind of allottees, Land Policy Guidelines, 2014 was given a statutory force under section 111 of the Major Port Trusts Act.

12. The learned Senior Counsel also drew the attention of this Court to the Judgment dated 20.11.2019 passed by the Division Bench of this Court in W.A.Nos.3746, 3754, 3623 & 3628 of 2019 reducing the penal charges payable by the petitioners to 50% and also directing the respondents to complete the E-auction tender process within a period of three months and also permitting the existing licensees to participate in the fresh E-auction tender process conducted by the respondents. He would submit that the Division Judgment has made it clear that the erstwhile allottees are protected by way of clause 11.3(c) of the amended Land Policy Guidelines of the Major Port, 2014. However, according to him, the respondents have given a go-by to the said direction by passing the impugned order even before completion of the E-auction.

13. Learned Senior counsel would submit that all the ship repairers who were allotted spaces have also gave a representation through their association on 17.07.2019 that auction cannot be conducted for covered land and it can be conducted only as a vacant land as the superstructures were put up by the respective allottees. According to the learned Senior Counsel without considering the said representation, the impugned letter has been passed by the second respondent. Learned Senior Counsel would submit that without affording a

fair hearing, the impugned order has been passed calling upon the petitioners to remove the superstructure and vacate the premises within a short period of time in violation of principles of natural justice. Learned Senior Counsel would also submit that despite the lockdown imposed by the Government of India due to Covid-19 Pandemic and in violation of Government Orders passed during lock-down period, the respondents have passed the impugned letter calling upon the petitioners to pay huge penalty.

14. Learned Senior Counsel would submit that the respective petitioners have been regularly paying the monthly charges to the respondents till the date of impugned letter, without committing any default and hence the impugned letter has to be necessarily quashed as it has been passed in violation of the Land Policy Guidelines 2014 issued by the Government of India which has got statutory force and in violation of principles of natural justice.

15. Mr.G.Ilamurugu, learned counsel representing M/s.Ras Turbo Private Limited, the petitioner in W.P.Nos. 27566 of 2019 and 8051 of 2020 would at the outset submit that he is adopting the arguments of Mr.Om Prakash, learned Senior Counsel. But in addition to that, he drew the attention of this Court to the Government Order dated 30.03.2020 issued by the Ministry of Shipping granting exemption from payment of penalty charges during Covid-19 pandemic lockdown. He would submit that the levy of penal charges by the respondents under the impugned letters is illegal and hence, it has to be quashed. He would submit that the scale of rates which is the basis for levy of penalty under the impugned order is not applicable as according to him, the present statutory regime is the Land Policy Guidelines, 2014 which protects the interest of the erstwhile allottees who have put up superstructures over the land.

16. Mr.C.Kanagaraj, learned counsel representing M/s. Royal Tech Marine Engineers, the petitioner in W.P.No.27642 of 2019 would reiterate the submissions made by Mr.Om Prakash, the learned Senior Counsel and Mr.G.Ilamurugu, learned counsel and apart from those submissions, he would submit that during the Covid-19 pandamic period, the respondents Port Trust allotted space without E-tender to one M/s.Global Port Solution on 20.05.2020 and would submit that the respondents have acted arbitrarily and illegally by passing the impugned letter. He drew the attention of this Court to section 53 of the Major Port Trusts Act, 1963 and would submit that the respondents are empowered to grant exemption to the allottees from payment of charges in view of the Covid-19 pandamic lockdown. According to him, the issues raised by the allottees has not been considered by the second respondent by a speaking order. Hence according to

him, the impugned order has been passed by not affording a fair hearing to all the petitioners and by violation of principles of natural justice.

17. Mr.V.Raghavachari, learned counsel representing M/s.Shri Sangeetha Logistics and M/s.Hindusthan Marine Engineering Works, petitioners in W.P.Nos.27653, 27656 & 7584 of 2020 would submit that though the nomenclature of the respective petitioners under the allotment letters issued by the Chennai Port Trust discloses that the respective petitioners are licensees but on a conjoint reading of the amended Land Policy Guidelines, 2014 and the allotment letters, the respective petitioners are infact lessees and thus entitled to the right of first refusal as per the Land Policy Guidelines, 2014. He would also reiterate the submission made by Mr.Om Prakash, learned Senior Counsel and would submit that the present statutory regime with regard to the land allotment within the Port premises to the existing allottees is the Land Policy Guidelines, 2014. He also drew the attention of this Court to the preamble of the Land Policy Guidelines, 2014 and would submit that the Land Policy Guidelines were formulated only under section 111 of the Major Port Trusts Act, 1963 and hence it is statutory and binding on the Port Trust. He would submit that as per the Land Policy Guidelines, the main objective was to ensure that the land resources are put to optimum use and only for the purpose of obtaining optimum value through a transparent tender methodology. According to him, the procedure adopted by the respondents is contrary to the main objective of the Land Policy Guidelines and in violation of the same, the impugned letter has been passed. He would also submit that the respective petitioners have been in occupation for the past several years and they cannot be treated as licensees, that too, when the respective petitioners have invested huge amount of money for putting up superstructure over the land with the permission of the Chennai Port Trust. He drew the attention of this Court to the allotment order by which the respective petitioners were put in possession of the land by the respondents and would submit that the usage of the term “sub-lease” implies that the nature of the documents is only of lease. In particular, he referred to clause 21 of the allotment letter for the said purpose.

18. In support of his contention, Mr.V.Raghavachari, learned counsel drew the attention of this Court to the following authorities:

(a) C.M.Beena vs. P.N.Ramachandra Rao reported in (2004) 3 SCC 595;

(b) Qudrat Ullah vs. Municipal Board reported in (1974) 1 SCC 202;

(c) Didi Modes Private Limited and Another vs. Hind Trading Manufacturing Company reported in AIR 1996 DEL 319;

(d) Associated Hotels of India vs. R.N.Kapoor reported in AIR 1959 SCC 1262

(e) Cobb vs. Lane reported in 1952-1 ALL ER 1199

(f) B.V.D'Souza vs. Antonio Fausto Fernandes, reported in (1989) 3 SCC 574;

(g) Mahendra Saree Emporium (II) vs. G.V.Srinivasa Murthy reported in (2005) 1 SCC 481

Referring to the aforementioned decisions, Mr.V.Raghavachari, learned counsel would submit that since the conduct of the respondents in permitting the respective petitioners to be in occupation for a long number of years and permitting them to put up permanent superstructures will clearly establish that the respective petitioners are only lessees and not licensees. He would further submit that even assuming the respective petitioners are licensees and not lessees, the license is irrevocable under section 60(b) of the Indian Easements Act, 1882. According to him, the nature of structure that has been raised is one of a permanent one.

19. Mr.V.Raghavachari, learned counsel drew the attention of this Court to the photographs of the structures presently found in the respective petitioners' land and would submit that the said structure was constructed involving huge costs and therefore, section 60(b) of the Indian Easements Act, 1882 gets attracted even assuming the respective petitioners are only licensees.

20. Mr.V.Raghavachari, learned Counsel drew the attention of this Court to the Judgment of the Hon'ble Supreme Court in the case of Hero Vinoth vs. Seshammal reported in (2006) 5 SCC 545 and Boodireddy Chandraiah vs. Arigela Laxmi reported in 2007 (8) SCC 155 and would submit that any question upon the construction of a document gives rise to a legal effect and therefore it is a question of law and hence according to him, the same can be adjudicated by this Court under Article 226 of the Constitution of India as it is not a question of fact.

21. Mr.V.Raghavachari, learned counsel then drew the attention of this Court to section 35(2) (l) of the Major Port Trusts Act, 1963 and would submit that the arguments of the respondents that section 35 will not apply for a contract between the Port Trust and the respective petitioners as it is not for the benefit of Port Trust is incorrect as the Land Policy Guidelines, 2014 does have the statutory force as it has been formulated under section 111 of the Major Port Trusts Act, 1963.

22. Mr.V.Raghavachari, learned counsel then pointed out that any contract by Port Trust has to adhere to the Major Port Trusts Act, 1963. He then drew the attention of this Court to clause 9 of the Land Policy Guidelines, 2014 and would submit that the leasing / licensing of the land is done within the framework of Major Port Trust Act, 1963 and the Land Policy Guidelines, 2014 are alone applicable as it has superseded the terms and conditions of the allotment letters and the scale of rates fixed by the Tariff Authority for Major Ports.

23. Insofar as W.P.No.7584 of 2020 wherein, M/s.Hindustan Marine Engineering Works has challenged the order dated Apr 2020, the petitioner was asked to pay 50% penalty for occupation by rejecting the request for waiver/remission on account of Covid-19 pandemic and for a direction to consider the representation dated 30.03.2020 is concerned, Mr.V.Raghavachari, learned counsel would submit that due to Covid-19 Pandemic, the number of ships entering Chennai Harbour has been considerably reduced and the business of the petitioner has drastically been reduced. He drew the attention of this Court to the Order of the Government of India dated 21.04.2020 which enables the respondents to grant exemption / remission of charges to Port users. According to him, the period of Covid-19 lockdown should be treated as a force majeure period and hence the levy of penalty under the impugned order is arbitrary and not in accordance with law.

24. Mr.V.Raghavachari, then drew the attention of this Court to the decision of the Madurai Bench of this Court in the case of R.Narayanan vs. Government of India & Others inW.P(MD). No.19596 of 2020 dated 01.02.2021 wherein this Court has directed the Municipal Corporation to waive the license fee for the period of lockdown on account of force majeure circumstances. Hence according to him, the respondents have ignored the Government of India directions during this pandemic situation by levying penalty upon the petitioners. Hence, according to him, penalty imposed by the respondents is bad in law and it has to be set aside.

25. Per contra, Mr.R.Sankaranarayanan, learned Additional Solicitor General of India appearing for the respondents would submit that the respective petitioners are bound by the terms and conditions of the respective allotment orders. He drew the attention of this Court to section 35 of the Major Port Trusts Act, 1963 and would submit that the said section makes it clear that the works envisaged therein are those services which the Port itself on its own performs and therefore according to him, the respective petitioners cannot seek protection under the said section. He would submit that in the case on hand, there is no privity of contract with regard to the services rendered by the

respective petitioners for the ships that touch Chennai Port. According to him, the instructions to the respective petitioners for doing ship repair works is given by ship owners/charterers and the Chennai Port Trust has no role to play. Hence according to him, section 35 of the Major Port Trusts Act, 1963 will not come to the aid of the respective petitioners. According to him, the respective petitioners are bound by the terms and conditions of the respective allotment orders. He drew the attention of this Court to the allotment orders and would submit that as per the allotment orders, the respective petitioners have unconditionally agreed to vacate the premises on the expiry of their respective licenses. Having agreed, the learned Additional Solicitor General would submit that the respective petitioners are estopped from taking recourse to the Land Policy Guidelines, 2014 as according to him, the allotment orders override the Land Policy Guidelines, 2014. He drew the attention of this Court to the statutory provisions under the Major Port Trusts Act, 1963 and would submit that the nature of service rendered by the respective petitioners is not of statutory nature and hence the respondent Port Trust is entitled to enforce the terms and conditions of the allotment orders against the respective petitioners. He also drew the attention of this court to the scale of rates fixed by the Tariff Authority of Major Port (TAMP) which is a statutory authority and would submit that penalty imposed under the impugned order upon the respective petitioners is only in accordance with the said statutory provisions.

26. Mr.R.Sankaranarayanan, learned Additional Solicitor General of India would reiterate that the respective petitioners are only licensees and they are bound to vacate the premises on expiry of the license. The allotment orders also makes it clear that the respective petitioners are only licensees and they will have to vacate the premises as the same has not been renewed for further periods. He drew the attention of this Court to the various clauses in the allotment orders to substantiate his case.

27. After referring to the allotment orders, Mr.R.Sankaranarayanan, learned Additional Solicitor General of India would submit that the following factual aspects are established:

(a) The open space was allotted on license basis.
(b) The transaction was not one of lease.
(c) The allottees cannot put any permanent structure.
(d) The allottees may put up only temporary structure.
(e) The allottees will have to remove the temporary structure at the time of vacating and it would be at their cost.
(f) If the allottees fail to remove the structure on the

expiry of the license, the Port Trust can remove it at the cost of the allottees.

(g) The renewal is discretionary and there is no vested right for the allottees to seek renewal.

28. Mr.R.Sankaranarayanan, learned Additional Solicitor General of India would submit that the issue whether it is a license or lease cannot be decided in a writ petition as it is a disputed question of fact. He drew the attention of this court to the letter dated 27.12.2018 sent by the respondents by which, the licensees were informed that all the areas would be E-auctioned and there can be no further renewal beyond 30.09.2019 and the allottees were directed to vacate and deliver possession back to the Chennai Port Trust. According to him, since the allottees have not vacated the premises on or before 30.09.2019, they are unauthorised occupants and the Chennai Port Trust is entitled to seek penalty from them as indicated in the impugned order.

29. Mr.R.Sankaranarayanan, learned Additional Solicitor General with regard to the applicability of clause 11.3 (c) of the Guidelines issued under the Land Policy Guidelines, 2014 would submit that the said guidelines relates to the land inside the custom bond area which requires a special treatment of license, in view of the peculiar features of the custom bond area. According to him, the Chennai Port Trust permitted the respective petitioners only to put temporary structures and not permanent structures. He would also submit that none of the present cases deal with allotment of land in custom bond area. Hence according to him, clause 11.3(c) of the Land Policy Guidelines, 2014 will not apply to the respective petitioners.

30. Mr.R.Sankaranarayanan, learned Additional Solicitor General then drew the attention of this Court to the impugned order dated 05.08.2019 and would submit that only in accordance with the scale of rates fixed by the Tariff Authority of Major Ports, which the respective petitioners have agreed to abide, the impugned order has been passed. According to him, there is no violation of principles of natural justice.

31. Insofar as force majeure circumstances are concerned, Mr.Sankaranarayanan would submit that the present issue will not fall under the force majeure clause as ships were arriving and departing from Chennai Port even during the period of lockdown.

Discussion:

32. The background of the Policy Guideline for Land Management by Major Ports, 2014 are as follows:

(a) Section 34(1) of the Major Port Trusts Act, 1963 empowers the Ports to lease out the land for a period upto 30 years and in case, the period of lease is for more than 30 years, prior approval of the Central Government is necessary.

(b) The Ministry of Shipping has issued Guidelines from time to time to regulate the allotment of land in a port area.

(c) The draft policy for land management by major ports 2012 was prepared by the Ministry and circulated to various stake holders and was also put up on the website of the Ministry inviting comments and suggestions. Simultaneously, inter-ministerial consultations were also done. Based on the inputs received, the Policy Guidelines for Land Management for Major Ports was finalised. The said Guidelines have been approved by the Union Cabinet on 02.01.2014. These guidelines were issued to all major ports for implementation. However, the Indian Ports Association, the apex body of major ports have highlighted certain advices and suggested some changes and there were also suggestions from different stake holders to improve the land policy guidelines.

33. Thereafter, the Ministry vide letter dated 08.08.2014 constituted a two member committee to examine the suggestions and furnish a report. Based on the report, revised guidelines have been framed and issued under section 111 of the Major Port Trusts Act, 1963.

34. Section 111 of the Major Port Trusts Act, 1963 empowers the Central Government to issue directions to Board of Trustees of any major Port constituted under the Major Port Trusts Act, 1963. Section 111 of the Major Port Trusts Act, 1963 reads as follows:

> “111. Power of Central Government to issue directions to Board.—
>
> (1) Without prejudice to the foregoing provisions of this Chapter, the Authority and every Board shall, in the discharge of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing from time to time:
>
> Provided that the Authority or the Board, as the case may be, shall be given opportunity to express its views before any direction is given under this sub-section.
>
> (2) The decision of the Central Government whether a question is one of policy or not shall be final.”

35. As seen from section 111 of the Major Port Trusts Act, 1963, the Board of Trustees of any Major Port is bound by the directions on questions of policy issued by the Central Government in writing from time to time. The decision of the

Central Government whether the question is one of policy or not shall be final.

36. Admittedly, it is not the case of the respondents that the Policy Guidelines for Land Management is not in existence. Infact pursuant to the directions given by a Division Bench of this Court on 20.11.2019 passed in W.A.Nos.3746, 3754, 3623 to 3628 of 2019, the respondent Port Trust conducted an E-auction cum tender for allotment of Lands including the respective petitioners lands in the Port area based only upon the Land Policy Guidelines for Major Ports, 2014. However, before this Court, the Chennai Port Trust is relying upon the allotment orders issued to the respective petitioners which contains the terms and conditions of allotment giving a go-by to land policy guidelines for major ports 2014. Having acted upon the Land Policy Guidelines earlier which may give protection to the respective petitioners as under the said guidelines, after the auction, the right of first refusal is given to them. However, under the impugned letter, the petitioners even though they have been consistently claiming that only Land Policy Guidelines, 2014 is applicable to them and not the scale of rates, the second respondent under the impugned letter has not considered the contention of the petitioners and by a non speaking order has called upon the respective petitioners to vacate the premises on or before 30.09.2019 and on failure to do so, called them to pay penalty as per the scale of rates fixed by the Tariff Authority for Major Ports (TAMP). As seen from the Land Policy Guidelines, 2014 issued by the Central Government, the same has been framed under section 111 of the Major Port Trusts Act, 1963. Hence, it is statutory in nature. Whether the said guidelines are applicable to the respective petitioners are not who are existing allottees have not been considered by the second respondent under the impugned non speaking letter.

37. Admittedly in all the cases, the respective petitioners have been permitted by the respondent Port to construct superstructures over the land allotted to them by Chennai Port Trust. Some of the petitioners are in occupation of the land for more than 20 years and some for a fewer number of years. All of them had put up superstructures over the land incurring some expenditure. The petitioners claim that they have invested huge money for putting up the superstructures. They have also contended that they are permanent structures. However, it is the contention of the respondents Port Trust that the structures put up by the respective petitioners are temporary structures which can be removed at any time. They also contend that as per the terms of the respective allotment orders, the respective petitioners will have to vacate the premises in case of non-renewal of the license. According to them, in view of the petitioners continuing to occupy the respective lands, despite

the second respondent Port Trust fixing the dead line as 30.09.2019., the impugned order calling upon them to pay penalty and to vacate premises is only in accordance with the scale of rates fixed by the Chennai Port Trust for violation of the allotment order.

38. Under clause 11.3 of the Policy Guidelines, the rights of the existing allottees was protected by specifying the first right of refusal on the basis of auction on the highest bid and further on being unsuccessful, the superstructures to be compensated and that the Port authorities have to formulate their own guidelines by a Board decision on the basis of such guidelines. The relevant clause in the Land Policy Guidelines reads as follows:

> "(c) During the process of renewal of existing/earlier leases, the Port is required to differentiate between those lease-agreements that provide for renewal and those that do not provide for such renewal at the end of the lease-period. In cases of renewal of existing leases, without renewal option at the end of the lease-term, the land will be put to tender-cum-auction with the first right of refusal to be extended to the existing lessee. The existing lessee should be allowed to match the H-1 bid. If any structure has been constructed by the earlier lessee on the leased land, it would be valued by a third party valuer to be agreed upon by the Port trust and the earlier lessee and the successful bidder has to remit the value of the structures which would be passed on to the previous lessee. The bidding and auction would be only on the reserve price of the land. With a view to dissuade non-serious bids, EMD for a valid bid should be fixed at 10% of the latest SoR of the land being put on tender. If the only bidder is the existing lessee, the annual lease rental would be determined on the basis of the latest SoR notified as per Para 13(c) or the price quoted by the existing lessee in the tender-cum-auction, whichever is higher. The provision of first right will also apply to expired lease (possession has been taken by the Port) also in addition to existing leases."

Infact by their letter dated 30.04.2019, the respondents Port Trust advised the respective petitioners to participate in the E-tender cum auction to be conducted by them in accordance with the Land Policy Guidelines, 2014. Even in the said communication, the respective petitioners were not directed to demolish their workshop structures put up by them over the unpaved open space allotted by the respondent Port.

39. The counter affidavit filed by the respondents before this Court has also not stated that the Land Policy Guidelines, 2014 are not applicable to the respondent Port.

40. Admittedly, the respective petitioners in all these writ petitions did not commit any default in the payment of monthly charges till the issuance of impugned letter dated 05.08.2019 and only thereafter some of them have defaulted due to the levy of huge penalty. The impugned letter dated 0508.2019 requires the respective petitioners to remove the superstructure and surrender the land but stipulates that the continuance of occupation beyond the stipulated period in the letter can only be on payment of the penal charges depending upon the number of months. The respondent Port Trust has extended the license only upto 30.09.2019 for all the petitioners. All the petitioners have admittedly put up superstructures only after getting permission from the respondent Port Trust.

41. Under the earlier auction conducted by the Chennai Port Trust subsequent to the order dated 20.11.2019 passed by the Division Bench of this Court in W.A.Nos.3746, 3754, 3623 to 3628 of 2019, the upset base price included the built up area and admittedly, the auction fell through as there were no takers. Having framed, the Land Policy Guidelines 2014, under section 111 of the Major Port Trusts Act, 1963 and having given effect to the same by conducting an auction earlier, the Chennai Port Trust ought to have considered on merits and in accordance with law by a speaking order the petitioners' representations claiming that the said Land Policy Guidelines 2014 are applicable to them. Even without giving due consideration to the representation of the petitioners claiming protection under clause 11.3(c) of the Land Policy Guidelines, the impugned letter has been issued by the second respondent calling upon the respective petitioners to vacate the premises by relying upon the scale of rates fixed by the Tariff Authority for Major Ports (TAMP) through a non-speaking order. The contentions of the respective petitioners that they are infact lessees and not licensees in view of their nature of occupation has also not been considered by the second respondent. As seen from the impugned letter, no hearing was afforded to the respective petitioners, that too, when the applicability of scale of rates fixed by Tariff Authority for Major Ports has been disputed by the respective petitioners. The second respondent ought to have afforded a fair hearing to the respective petitioners before passing the impugned order. Hence, this Court is of the considered view that principles of natural justice has been violated by the second respondent while passing the impugned order calling upon the respective petitioner to pay a huge penalty.

42. The second respondent has also not considered the representations of the respective petitioners that they are not liable to pay penalty in view of covid-19 pandemic lockdown in terms of the Government orders passed from time to time.

43. Since the second respondent has passed a non-speaking order without considering the contentions of the respective petitioners on merits and in accordance with law, the impugned order will have to be necessarily quashed and the matter remanded back to the second respondent for fresh consideration.

44. For the foregoing reasons, the impugned order dated 05.08.2019 passed against the respective petitioners in W.P.Nos.27566, 27642, 27648, 27572, 27653, 27656 27657 of 2019 and the impugned order dated ..04.2020 and 31.03.2020 passed against the respective petitioners in W.P.Nos. 7584 & 8051 of 2020 are hereby quashed and the matter remanded back to the second respondent for fresh consideration. The respective petitioners are directed to give a fresh representation to the second respondent with regard to their respective contentions raised by them in their respective writ petitions within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the second respondent shall pass a speaking order on merits and in accordance with law after giving due consideration to the contentions raised by the respective petitioners and after affording a fair hearing to the respective petitioners including granting them the right of personal hearing within a period of four months thereafter. However, it is made clear that the petitioners should not have any arrears of monthly charges (excluding the penalty) as on the date of their fresh representation and in case there are arrears, the respondents shall summarily reject their representation.

45. With the aforesaid directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Chairman,
Chennai Port Trust,
Chennai - 600 001.

2.Traffic Manager,
Chennai Port Trust,
Chennai - 600 001.

+2cc to Mr.G.Ilamurugan, Advocate Sr.21991, 21992
+2cc to M/s.V.Raghavachari, Advocate Sr.21953, 21954
+3cc to M/s.M.Suresh, Advocate Sr.21807,21808,21809
+2cc to M/s.C.Kanagaraj Associates, Advocate Sr.21856

W.P.Nos.27566, 27642, 27648, 27572, 27653, 27656 & 27657 of 2019 & 7584 & 8051 of 2020

rsv[co]
srg 07/04/2021