IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1717 OF 2010

Shri Shailendrakumar Gowardhandas Agrawal
Aged about 46 years,
Occupation – Business,
R/o. Khaparde Plot, Paratwada,
District - Amravati

...PETITIONER

VERSUS

1. State of Maharashtra,
through the Secretary,
Department of Forest,
Mantralaya, Mumbai - 32

2. The Principal Chief Conservator of Forest,
Van Bhawan,
Civil Lines, Nagpur

3. The Chief Conservator of Forest (Territorial),
Amravati,
Tahsil and District Amravati

4. The Deputy Conservator of Forest,
(East) Melghat Forest Division,
Chikhaldara

...RESPONDENTS

Ms. Shiba Thakur, Advocate h/f Shri S.S. Sanyal, Advocate for the petitioner.
Ms. N.P. Mehta, Assistant Government Pleader for respondent No.1/State.

<u>CORAM : A.S. CHANDURKAR AND</u>
<u>SMT. URMILA S. JOSHI-PHALKE, JJ.</u>

<u>DATED : JUNE 30, 2022.</u>

<u>JUDGMENT</u> <u>(Per Smt. Urmila S. Joshi-Phalke, J.)</u>

Heard finally with the consent of both the parties.

2. The petitioner has challenged the action of respondent Nos.3 and 4 imposing penalty amounting to Rs.3,90,920/- vide orders dated 29/03/2010 and 30/03/2010 respectively.

3. The petitioner had participated in the auction held by respondent No.4 for sale of timber logs at Paratwada depot on 22/10/2008. He has purchased total amount of timber for Rs.72,30,700/- in five lots. As per the contention of the petitioner, as per the terms and conditions of Resolution issued by the Government of Maharashtra, Revenue and Forest Department dated 29/04/1986 and as per the communication dated 03/12/1986 by respondent No.2 the petitioner was required to deposit 3/4th amount of sale price along with Proportionate Forest Development

Tax, Sales Tax, Value Added Tax and all other taxes within 60 days. As per the condition, additional 30 days will be allotted. The limitation will be calculated from the date of auction or the date of communication of acceptance of bid and interest @ 18% per annum. As per clause 13(a) provides that failing to pay 1/4th of the sale price or 3/4th of the sale price with taxes may entail cancellation of sale and all such amount already paid by the auction purchaser would stands forfeited. It is further the contention of the petitioner that the clarification issued by respondent No.2 dated 03/12/1986 specifies that in case of delay in payment by auction purchaser he would be liable to pay penalty @ 10%.

4. On 03/09/2009, respondent No.4 called upon the petitioner to pay an amount of Rs.3,90,920/- as penalty for the total amount of purchase made by him under various lots. Therefore, he preferred a representation to respondent No.4 vide communication dated 02/12/2009 and informed that he has already paid the amount and there is a delay of two days in making payment. Respondent No.4 informed to respondent No.3 vide communication dated 18/03/2010 and 23/03/2010 stating that

sale was completed and interest was paid. But respondent No.3 misread the provisions of the Unified Depot Sale Conditions and held that the petitioner is liable to pay penalty of Rs.3,90,920/-. The communication of respondent No.4 holding the petitioner is liable to pay Rs.3,90,920/- is arbitrary and illegal and the said communication is liable to be quashed and set aside.

5. The respondents resisted the petition by filing reply. Stand taken by the respondents is that as per Clause 12(b), remaining 3/4th amount of sale price along with proportionate of Forest Development Tax plus entire amount of Sales Tax and all other taxes, rates and duties is to be paid within a period of 60 days or within a period of 90 days with interest @ 18%. The interest was to be charged on all the amount and not only on sale proceeds. The last date of payment was 21/01/2009 with interest.

6. The petitioner paid an amount of Rs.7,32,000/- on 04/02/2009 i.e. after delay of 14 days. Thus the petitioner is liable to pay VAT amount which is 4% of sale price. The petitioner paid 3/4th amount of sale price on 24/02/2009 after delay of 14 days.

Hence, without taking coercive action respondents had only claimed penalty amount.

7. Heard Ms. Shiba Thakur, learned Counsel for the petitioner. She reiterated the contention as contended in the petition.

8. Heard Ms. N.P. Mehta, learned Assistant Government Pleader for the State. She submitted that as there is contravention of Clause 12(a) and (b), therefore, the petitioner is liable to pay the penalty amount. The action taken by the respondents is legal one and the writ petition is liable to be dismissed.

9. Heard the learned Counsel for the respective parties and perused the record. Admittedly the petitioner participated in bid on 22/10/2008. The Resolution issued by the Government of Maharashtra, Revenue and Forest Department dated 29/04/1986 laid down the terms and conditions of bid. The condition Nos.12(a) and (b) is reproduced below :

"12. The Auction purchaser shall pay the amount of his bid which has been accepted (hereinafter referred to at "the sale price") as follows :

(a) 1/4th of the sale price along with the proportion amount of the Forest Development tax as per Maharashtra Forest Development (Tax on sale of forest produce by Government or Forest Development Corporation (Continuance) Act, 1983 within seven days from the date of auction/date of communication of acceptance by the competent authority as the case may be. Provided, however, that if the Auction Purchaser makes payment of the said 1/4th sale price along with the proportionate amount of the Forest Development Tax at any time thereafter but before the expiry of further twenty three days then he shall have to pay there with interest thereon at the rate of 18 per cent per annum. From the date of auction/date of communication of acceptance by the competent Authority as case may be for late payment till payment is realised.

(b) Balance 3/4th of the sale price along with the proportion amount of the Forest Development Tax plus the entire amount of sales tax in accordance with the provisions of Bombay Sales Tax Act, 1959 (LI of 1959) as amended and in force for the time being along with the proportionate amount of the Forest Development Tax and all other taxes, rates and duties as are leviable thereon within sixty days from the date of auction/date of communication of acceptance by the Competent Authority as the case may be. Provided, however, that if the Auction Purchaser makes payment of the said 3/4th the sale price plus Sales Tax, Forest Development Tax and all other taxes, rates and duties at any time thereafter

> *but before the expiry of further thirty days then he shall have to pay interest thereon further late payment at the rate of 18 percent for annum from the date of auction/date of communication of acceptance by the Competent Authority as the case may be till payment is realized."*

10. In this case, auction held in the month of April, 2008. The Deputy Conservator of Forest vide its Outward No. Revenue/226 dated 02/06/2008 informed the petitioner about sanction of bid. Said period was to expire on 30/08/2008. As per condition No.12(b), the payment towards 3/4th Sale Proceeds plus Sales Tax, Forest Development Tax and all other taxes, cess and fees payable within a period of 90 days. On failure, there is a provision of forfeiture of earlier amount deposited as per Clause 13(a) and (b). Admittedly, the petitioner has not deposited the amount within a period of 90 days and, therefore, the penalty is imposed.

11. After receipt of representation made by the petitioner, respondents had considered said representation and explained that the Deputy Conservator of Forest has imposed the fine of Rs.3,89,350/-. It was explained to the petitioner that sanction was accorded for the aforesaid block on the place of auction held in the

month of April, 2008. Vide communication dated 02/06/2008, the petitioner was informed that sanction was accorded. Accordingly, period of 90 days was given to make the payment. Said period expired on 30/08/2008. Said period is calculated from the next date i.e. excluding the day on which the auction had been sanctioned as per paragraph No.2 of Circular dated 30/06/1995 issued by the then Chief Conservator of Forest (Forest Produce), State of Maharashtra, Nagpur.

12. As per condition No.12(b) of the terms and conditions of the sale of the consolidated depot, the payment towards 3/4th of the Sale Proceeds plus Sales Tax, Forest Development Tax and all other taxes, cess and fees payable thereon was to be deposited by the purchaser within a period of 90 days. In view of condition Nos.12(a) and (b) there is a provision as per condition No.13(a) to cancel the auction in favour of the purchaser and to resell the same with risk and responsibility, or to hand over the forest produce to the purchaser concerned by imposing the fine @ 10% of the sale proceeds agreed by him. In the present case, VAT of Rs.1,56,368/- @ 4% of the sale proceeds of Rs.39,09,200/- approximately, as well

as periodical Taxes such as Forest Development Tax, Income Tax, etc. which have already been recovered and, therefore, fine was imposed to Rs.3,90,920/-.

13. The petitioner's representation which was undated was considered by respondent Nos.3 and 4 and it was clarified to the respondent that as payment was made after 14 days and, therefore, he was liable to pay the fine of at least Rs.3,90,920/-. The petitioner had contravened the terms and conditions which is mentioned in Clause 12(a) and (b) and, therefore, fine was imposed on him.

14. The representation made by the petitioner has been considered by the respondents and the facts have been explained to the petitioner under which the fine is imposed. Thus the terms and conditions itself are clear that if the petitioner paid the amount after 90 days then he was liable to pay the penalty @ 10%. Thus fine has been imposed by following the conditions which were agreed by the petitioner mentioned in the tender, therefore, the contention of the petitioner that action of respondent Nos.3 and 4

was arbitrary, illegal has no substance. The fine as imposed is in accordance with the said terms and conditions. Hence, writ petition deserves to be dismissed.

15. We proceed to pass the following order:

(a) The writ petition is hereby dismissed with no order as to costs.

16. Rule stands discharged.

(SMT. URMILA S. JOSHI-PHALKE, J.) **(A.S. CHANDURKAR, J.)**

**Divya*

Signed By:DIVYA SONU BALDWA

Signing Date:30.06.2022 14:45