



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.01.2022

Coram:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

O.S.A.No.57 of 2017

M/s.Tungabadra Minerals Private Limited,
No.322/3, II Floor, Sree Sapthagiri Enclave,
College Road, Hospet-583 201,
Bellary District,
Karnataka.

...Appellant/Plaintiff

Vs.

1. The Chennai Port Trust,
Represented by its Chairman,
No.1, Rajaji Salai,
Chennai-600 001.

2. Chief Mechanical Engineer,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai-600 001.

...Respondents/Defendants

Original Side Appeal filed under Order 36 Rule 1 of the Original Side Rules of Madras High Court, read with Clause 15 of the Letters Patent, against the judgment and decree, dated 12.01.2017 passed by the learned Single Judge, in Civil Suit No.1050 of 2010 on the file of this Court.

PRAYER: This Civil Suit filed under Order IV Rule 1 O.S. Rules read with Order VII Rule 1 CPC, praying for the following reliefs:

(a) for a declaration that the contract between the plaintiff and the defendants pursuant to the issuance of the iron ore stacking area transit license No. MEE/V1/207/2010/Dy.CME (OH) vide allotment order No. 5/2010 dated 31.01.2010 and allotment order No. 15/2010 dated 05.02.2010 became void as on 28.07.2010;

(b) For a permanent injunction restraining the defendants from in any manner recovering any amounts from the plaintiff under the Allotment orders for alleged shortfall in the minimum guaranteed throughput during the allotment period from 01.02.2010 to 31.12.2010;



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c) for a mandatory injunction directing the defendants to return the bank guarantees bearing No. 8000 IPEBG090017 dated 17.03.2009 of the Bank of India and bank guarantee No. 0482 IGF IN 000410 dated 24.02.2010 of the Bank of Baroda issued in favour of the first defendant;

(d) for a direction that the upon coming into force of the Government Order dated 28.07.2010, whereby issuance of mineral dispatch permit for transportation of iron ore for the purpose of exporting it from the State of Karnataka was prohibited with immediate effect, an event of *Force Majeure* had occurred; and

(e) to direct the defendants to pay the costs of the suit to the plaintiff.

For Appellant : Mr.Yashod Vardhan,
Senior Counsel for M/s.Vinod Kumar

For Respondents : Mr.R.Sankaranarayanan,
Addl. Solicitor General of India

JUDGMENT

(The Judgment of the Court was delivered by T.Raja, J)

This Original Side Appeal has been filed against the judgment and decree, dated 12.01.2017 passed by the learned Single Judge, in Civil Suit No.1050 of 2010 on the file of this Court, in and by which, the learned Single Judge had dismissed the said Civil Suit, with costs.

2. Learned Senior Counsel appearing for the appellant/plaintiff Company would argue that the appellant/plaintiff filed Civil Suit No.1050 of 2010 for a declaration that the contract between the plaintiff and the defendants pursuant to the issuance of the iron-ore stacking area transit license, vide allotment order No.5/2010 dated 31.01.2010 and allotment order No.15/2010 dated 05.02.2010 has become void as on 28.07.2010, with a consequential relief of permanent injunction restraining the defendants from in any manner recovering any amounts from the plaintiff under the allotment orders for the alleged shortfall in the minimum guaranteed throughput during the allotment period from 01.02.2010 to 31.12.2010, and also for mandatory injunction directing the defendants to return the Bank Guarantees dated 17.03.2009 of the Bank of India and dated 24.02.2010 of the Bank of Baroda issued in favour of the first defendant with an



alternative prayer. As the appellant/plaintiff is using the Chennai Port as the transit port for export of the iron-ore extracted from the mines in Karnataka, the iron-ore is required to be stacked within the premises of the Chennai Port, once it reaches the Chennai Port. Therefore, the Chennai Port also has provided the stacking area within its premises, subject to certain terms and conditions stipulated by the respondents/defendants in the license/allotment orders. The appellant/plaintiff has also deposited a sum of Rs.27,75,000/- being 50% of the charges of total open area capacity reserved for the appellant/plaintiff in terms of Clause 9 of the allotment order and also furnished Bank Guarantees in favour of the respondents/defendants for a sum of Rs.6,09,03,480/- which was valid till 28.02.2011. On account of various complaints from across the State regarding the illegal mining and misuse of mineral transport permits and export of iron-ore from the Ports in Karnataka by some companies, the Government of Karnataka also issued a Government Order dated 26.07.2010 prohibiting the export of iron-ore with immediate effect. In view of the said Government Order, none of the exporters of iron-ore in Karnataka were able to carry on their export and therefore, the said Government Order came to be challenged before the High Court of Karnataka in a batch of writ petitions filed by the exporters of iron-ore and the High Court of Karnataka also, in its order dated 19.11.2010, disposed of the writ petitions and upheld the Government Order. The appellant/plaintiff was also unable to export iron-ore from the Chennai Port consequent to the above mentioned order issued by the Government of Karnataka banning the export of iron-ore. Therefore, for the period from 01.02.2010 till 31.12.2010, the contract between the parties has become impossible of performance. Therefore, the appellant/plaintiff, in letter dated 10.12.2010, addressed to the respondents/defendants, requested that the period prohibiting the issuance of the mineral dispatch permit be excluded under the "force majeure" clause, while reckoning the minimum guaranteed throughput, because the performance of the obligation to export the minimum guaranteed throughput, had become impossible of performance, and consequently, the respondents/defendants were requested to treat the contract as void since 28.07.2010, considering the appellant/plaintiff being absolved of all the obligations under the contract and therefore, the Bank Guarantees should be returned and the security deposit also to be refunded. Since the contract with the respondents/defendants stipulating the Minimum Guaranteed Throughput (MGT) has become impossible of performance, the appellant/plaintiff was constrained to file the suit for the reliefs as mentioned supra.



3. Opposing the claim, the respondents/defendants filed a detailed written statement, inter-alia stating that the agreement between the appellant and the respondents is not to be treated as void and cannot be brought under the "force majeure" event, for the reason that the appellant had not achieved the stipulated MGT, in view of the fact that the iron-ore companies including the appellant, have committed illegal mining, for which they were banned.

4. After hearing both sides, the learned Single Judge, accepting the case of the defendants, dismissed the suit, as against which the present appeal has been filed by the plaintiff.

5. Arguing further, learned Senior Counsel appearing for the appellant would submit that the conditions mentioned in the allotment order relating to the export of the Minimum Guaranteed Throughput during the relevant period, could not be complied with by the appellant only on account of the ban imposed by the State of Karnataka, prohibiting the issuance of the mineral dispatch permits for transportation of the iron-ore from the State, and therefore, the case of the appellant should be brought under the "force-majeure" event.

6. Mr.R.Sankaranarayanan, learned Additional Solicitor General appearing for the respondents/defendants, refuting the arguments advanced by the learned Senior Counsel for the appellant, submitted that the appellant/plaintiff cannot take the ground of "force majeure", due to the export ban imposed by the State of Karnataka, for the reason that when the Government of Karnataka had appointed Hon'ble Mr.Justice N.Santhosh Hegde, Lokayukta, to investigate into the illegal mining under the Karnataka Lokayukta Act as early as 12.03.2007 and 09.09.2007, the same cannot be disputed by the appellant. Moreover, the appellant-Company has become the subject matter of enquiry. Therefore, the learned Single Judge has rightly come to the conclusion that the appellant had miserably failed to explain that the ban was not self-induced and that they involved exclusively only in legally acceptable mining processes. Further, the Apex Court also, while examining the Government Orders, has categorized the mines of the appellant as 'B' and 'C' and it was admitted by the learned counsel appearing for the appellant before the Apex Court that the appellant had two existing mines coming under the 'C' category, and therefore, it was held that the respondents are entitled to invoke the Bank Guarantee.

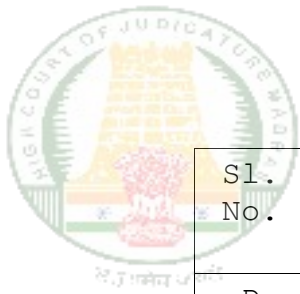


7. We are also able to see that the appellant/plaintiff is having two existing mines under the 'C' category. When the appellant-Company have also become the subject matter of enquiry held by Hon'ble Mr. Justice N. Santhosh Hegde, Lokayukta, appointed by the Government of Karnataka to investigate into the illegal mining under the Karnataka Lokayukta Act on 12.03.2007 and 09.09.2007, in our considered opinion, unless the appellant/plaintiff substantiates that they have come out from the enquiry successfully, the plea advanced by the learned Senior Counsel appearing for the appellant that the case of the appellant should be brought under the "force-majeure" event, is far from acceptance, as rightly held by the learned Single Judge. Therefore, we do not find any merit in the appeal.

8. Moreover, learned Senior Counsel appearing for the appellant/plaintiff-Company, soliciting our notice to the decree passed by the learned Single Judge, stated that the decree impugned says clearly that the respondents/defendants (Chennai Port Trust) are entitled to quantify their loss suffered owing to their short-fall quantifying to 4,81,780/- MTS, but in the written statement, the defendants had quantified the same at Rs.5,54,04,700/-. The learned Senior Counsel further submitted that the defendants/Chennai Port Trust are not entitled to keep the huge amount of Rs.82,73,780/- being the excess amount held by the first defendant, as stated in the Table, dated 31.01.2022 filed today by the appellant-Company, showing the excess amount. It is useful to extract the said Table, as follows:

"TABLE SHOWING THE EXCESS AMOUNT HELD BY THE FIRST RESPONDENT

Sl. No.	Particulars	Amount (in Rs.)	Total (in Rs.) (C + D)
A	Bank Guarantee furnished by the Appellant as per Allotment Order and encashed by the First Respondent	6,09,03,480	-
B	Amount granted in Decree passed by the Hon'ble Single Judge in C.S.No.1050 of 2010	(5,54,04,700)	-
C	Excess Amount held by First Respondent after encashment of Bank Guarantee (A-B)	54,98,780	54,98,780



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Sl. No.	Particulars	Amount (in Rs.)	Total (in Rs.) (C + D)
D	Amount deposited by the Appellant towards Security Deposit as per Allotment Order and held by the First Respondent	27,75,000	27,75,000
Total Excess Amount held by the First Respondent (C+D)			82,73,780

Dated at Chennai this the 31st Day of January 2022."

9. Learned Additional Solicitor General, appearing for the respondents/defendants/Chennai Port Trust, in reply, while inviting the attention of this Court to the letter dated 03.01.2011 (as found in page No.133 of the typed set Vol.II, dated 06.02.2017, filed by the appellant-Company) addressed by the Chief Mechanical Engineer of the Chennai Port Trust to the appellant-plaintiff-Company, stated that the Chennai Port Trust had requested the appellant-Company to make arrangements to remit the short-fall charges of Rs.5,54,04,700/- (Rupees five crores, fifty four lakhs, four thousand and seven hundred only) @ Rs.115/- per Metric Tons, along with applicable Service Tax as per the conditions laid down in the allotment order within ten Trust Working days from the date of receipt of the said letter, dated 03.01.2011. Thus, the learned Additional Solicitor General submitted that the plaintiff-Company is liable to pay the Service Tax @ Rs.115/- per Metric Tons as stated above, and the so-called excess amount said to have been retained by the respondents-Chennai Port Trust, cannot be released.

10. Though the learned Additional Solicitor General sought time to file affidavit explaining as to how the defendants-Chennai Port Trust are entitled to claim Service Tax, but, in the impugned decree dated 12.01.2017 passed by the learned Single Judge in C.S.No.1050 of 2010, it is specifically mentioned as follows:

"That the defendants herein be and are hereby entitled to invoke the Bank Guarantee

2) That the defendants herein be and hereby entitled to quantify their loss suffered owing to shortfall of quantity of 4,81,780/- mts which in the written statement they had quantified at Rs.5,54,04,700/- (Rupees Five crores fifty four lakhs four



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thousand and seven hundred only) and the plaintiff has to make good the same

3) That the suit C.S.No.1050 of 2010 do stand dismissed.

4) That the plaintiff herein do pay to the defendants herein the costs of this suit as and when taxed by the taxing officer of this court and noted in the margin thereof."

11. Taking into consideration the submissions made on either side and in view of the impugned decree passed by the learned Single Judge, coupled with the above extracted Table relied on by the learned Senior Counsel appearing for the appellant-Company, it is for the parties to work out their remedy in the manner known to law, in the Executing Court, if they are so advised.

12. Thus, while we do not find any infirmity in the conclusions/findings arrived at by the learned Single Judge, the present O.S.A. is dismissed with the above said liberty to the parties. There shall be no order as to costs in the present appeal.

s/d-
Assistant Registrar(I)

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Sub-Assistant Registrar

ss/cs

To

1. The Chairman,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai-600 001.
2. Chief Mechanical Engineer,
Chennai Port Trust,
No.1, Rajaji Salai,
Chennai-600 001.



3. The Sub-Assistant Registrar,
Original Side,
High Court, Madras.

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+1 CC to Mr.Vinod Kumar, Advocate sr 5726

+1 CC to Mr.M.R. Dharanichander, Advocate sr 5593.

O.S.A.No.57 of 2017

NRL (CO)
SP (24/03/2022)