IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.724 OF 2014

M/s Fertiland Industries … PETITIONER

VERSUS

The Collector, Jalgaon & ors. … RESPONDENTS

…….
Mr. R.R. Karpe, Advocate for petitioner
Mr. A.R. Kale, A.P.P. for respondents
…….

CORAM : SMT. ANUJA PRABHUDESSAI AND R.M. JOSHI, JJ.

DATE : 28th FEBRUARY, 2023

P.C. :

With the consent of learned counsel for rival parties, heard finally at the stage of admission.

2. By this is a petition under Articles 226 and 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, the petitioner has sought to quash order dated 6/3/2014 passed by respondent No.1 and further sought directions to pay interest @ 12% p.a. on the amount of Rs.35,66,720/- from the date of seizure of the goods till the date the principal amount was paid.

3. Heard learned counsel for the petitioner and learned A.P.P. for the respondents. We have perused the records and considered the submissions advanced by learned counsel for respective parties.

4. The petitioner is in the business of manufacture of fertilizers. On 7/1/1998, the Quality Control Inspector, Zilla Parishad, Jalgaon had issued a stop sale order for stock of fertilizers. On 18/6/1998, the fertilizers manufactured by the petitioner Company came to be seized. By order dated 6/7/1998, the Collector, Jalgaon ordered auction of the seized goods with further directions to deposit the amount in revenue deposit. Accordingly, the seized goods came to be auctioned on 7/7/1998 but the amount received from the sale of goods was deposited in the criminal deposit.

5. Pursuant to the First Information Report lodged by the District Quality Control Inspector, Crime No.3007/1998 came to be registered against the Directors of the petitioner Company at Jalgaon City Police Station for offences punishable under Sections 3 and 7 of the Essential Commodities Act. The Directors of the petitioner Company filed application for discharge which came to be rejected on 8/5/2002. They challenged the said order in Criminal Revision Application

No.225/2002, which was allowed by the learned Sessions Judge vide order dated 29/10/2022 and consequently, the Directors of the petitioner Company came to be discharged.

6. The State of Maharashtra filed Criminal Writ Petition No.81/2003 challenging the order of the Sessions Court in Criminal Revision Application No.225/2002. The Directors of the petitioner Company filed Criminal Application No.2019/2007 in the said Writ petition seeking release of the amount of auction proceeds which was deposited in revenue account. By order dated 16/6/2008, the learned Single Judge of this Court, as His Lordship then was, allowed the application and directed the respondents and its authorities to release the amount lying in Criminal Deposit Account No.184430003 along with interest accrued thereon subject to Bank guarantee.

7. It is stated that, the Criminal Application filed by the State of Maharashtra also came to be dismissed and the challenge to the said order in Special Leave Petition (Crl) No.7737/2010 also came to be dismissed. In pursuance of order dated 16/6/2008 in Criminal Application No.2019/2017, the Director of the petitioner Company applied to the Sub-Divisional Officer, Jalgaon to release the amount. By order dated 15/16th January 2009, the Sub-Divisional Officer held that

the petitioner is entitled for interest @ 9% p.a. on the amount of Rs.35,66,720/- and also called upon the Directors of the petitioner Company to submit Bank guarantee in respect of the said amount. Since the respondents and its authorities did not release the amount, the petitioner made a representation for compliance of the said order. The respondent authorities did not pass any order on the said representation which necessitated the petitioner to file Criminal Writ Petition No.1105/2013. The said petition came to be disposed of by order dated 20/1/2014 with directions to the District Collector (Supply Department), Jalgaon to hear and decide the said representation as expeditiously as possible on its own merits. In pursuance of the said order, the Collector, by the impugned order dated 6/3/2014, held that the petitioner is not entitled for interest on the amount so deposited with the respondent in Criminal Deposit Account. This order is subject matter of this petition.

8. Learned A.P.P. has opposed the petition mainly on the ground that the petitioner has an alternative efficacious remedy. He further contends that, there is no provision in law which would entitle the petitioner for interest over the amount which is deposited in revenue account.

9. With regard to the maintainability of the petition, the availability of alternate remedy is not an absolute bar in exercising the writ jurisdiction under Article 226 of the Constitution of India. In the instant case, the remedy of appeal is said to lie before the Divisional Commissioner under the Maharashtra Land Revenue Code. It is pertinent to note that, the Collector has passed the impugned order under the directions of the Divisional Commissioner who has suggested that the order passed by Sub-Divisional Officer if found incorrect, then the same be considered in Revision. In view of this communication dated 11/3/2014 (Exhibit I), there is no point in referring the petitioner to the said authority i.e. Divisional Commissioner. In the circumstances, we are not inclined to accept the contention of the learned A.P.P. to refer the petitioner to the statutory authority.

10. It is not in dispute that the fertilizers of the petitioner Company were seized and were put to auction and an amount of Rs.35,66,720/- was recovered. Section 6-A(1) of the Essential Commodities Act interalia authorises the Collector to order confiscation of the seized goods if he is satisfied that the same was in contravention of the order made under Section 3. Sub-section (2) of Section 6-A provides that, where the Collector, on receiving a report of seizure or on inspection of

any essential commodity under sub-section (1), is of the opinion that the essential commodity is subject to speedy and natural decay or it is otherwise expedient in the public interest so to do, he may order the same to be sold by public auction. Sub-section (3) of Section 6-A authorises payment of the sale proceeds to the owner or the person from whom it is seized after deducting the expenses incurred.

11. In this regard, it would also be relevant to refer to Section 6-C of the Essential Commodities Act which relates to the appeal and provides that where an order under Section 6-A is modified or annulled by judicial authority or where in a prosecution instituted for the contravention of the order in respect of an order of confiscation has been made under Section 6-A, the person concerned is acquitted, and in either case it is not possible for any reason to return the said essential commodity seized, such person is entitled for price of the essential commodity as if it has been sold to the Government, with reasonable interest calculated from the date of seizure of the essential commodity. A plain reading of Section 6-C of the Essential Commodities Act would indicate that, upon acquittal or upon modification or annulment of order under Section 6-A, the concerned person is entitled to receive the value of the goods seized, with reasonable interest, whereafter return of such

goods is not possible for any reason.

12. In the present case, as noted above, the fertilisers weres seized and put to auction and the amount of Rs.35,66,720/- was recovered. Learned A.P.P. states that no order of confiscation was ultimately passed by the Collector in respect of the seized goods. Furthermore, it is also not in dispute that the Directors of the petitioner Company were discharged by the learned Sessions Judge and as such, no criminal proceedings were pending against the Directors of the petitioner Company in relation to contravention of the order under Section 3. It was under these circumstances the respondent authorities were not entitled to retain the money recovered by sale of the goods through public auction.

13. It is also to be noted that, this Court by order dated 16/6/2008 had directed the respondents and its authorities to release the amount along with interest accrued thereon. Despite the order, the respondent authorities did not return the amount.

14. It is evident that the respondent authorities had retained the money of the petitioner despite that there being no criminal proceedings pending against the petitioner. It was under these circumstances that the petitioner Company is held

to be entitled for reasonable interest on the amount retained by the respondent authorities. Hence, the question whether the money was deposited in Revenue Account or Criminal Deposit Account is of no relevance.

15. In such circumstances, we are unable to accept the contention of learned A.P.P. that the respondent authorities are not liable to pay any interest to the petitioner.

16. In the result, the respondents are liable to pay reasonable interest on the money which was so retained. The reasonable interest in our considered view, would be the rate of the Bank interest, which at the relevant time, is stated to be 6% p.a.

17. Under the circumstances, the respondents are directed to pay to the petitioner interest @ 6% p.a. on the amount of Rs.35,66,720/- from the date of order of discharge of the Directors of the petitioner Company till the date the principal amount was paid to the petitioner. The petition is disposed of in above terms.

(R. M. JOSHI, J.) **(SMT. ANUJA PRABHUDESSAI, J.)`**

fmp/-