



W.P. No.329/2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
20.04.2023	28.04.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**W.P. NO.329 OF 2018
AND
W.M.P. NO.384 OF 2018**

M/s. MSPL Ltd.
Rep. by its Authorised Signatory
Mr. A.G.Desai, Vice President-Legal
Baldota Enclave
Abheraj Baldota Road
Hopet 583 203, Karnataka. .. Petitioner

- Vs -

1. The Chennai Port Trust
Rep. by its Chairman
Rajaji Salai, Chennai 600 001.

2. The Chief Mechanical Engineer
Chennai Port Trust
Rajaji Salai, Chennai 600 001. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying
this Court to issue a writ of certiorarified mandamus calling for the records



W.P. No.329/2018

WEB COPY
pertaining to the impugned letter No.MEE/VI/454/2011/Dy.CME(OH) dated 8.6.2017 by the 2nd respondent and quash the same and consequently direct the respondents to pay the amount received in auction being a sum of Rs.74,52,000/- (Rupees Seventy Four Lakhs and Fifty Two Thousand only) together with interest @ 18% per annum.

For Petitioner : Mr. P.H.Arvind Pandian, SC
For Ms. Sreevidhya

For Respondents : Mr. M.R.Dharnichander

ORDER

The auction sale of the iron ore and the resultant adjustment of the amount received in the said auction to the extent of Rs.74,52,000/- towards demurrage charges and the consequential demand of the balance of Rs.77,26,551/- towards demurrage charges by the 2nd respondent vide the impugned order is assailed by filing the present writ petition.

2. It is the case of the petitioner that it entered into an agreement bearing No.EME/VI/29/2006/SE (OH) dated 09.10.2006 with the respondent for allotment of plots designated as E@, C1 and W5 with capacity for storage of 1,20,000 MT for the period from 1.4.2006 to 31.3.2007. The terms and



W.P. No.329/2018

WEB COPY

conditions have been stipulated in the said agreement and further on expiry of the term, fresh allotment of plot vide separate agreement was entered into of which the last of the allotment was from 1.2.2010 to 31.12.2010.

3. It is the further case of the petitioner that the expansion of business resulted in the petitioner requesting for bigger plot to receive the stockpile and export of iron ore cargo. However, the petitioner started facing transportation issues from February, 2010 as issuance of transport permit to the petitioner was denied as the Government of Karnataka banned export of iron ore from 26.7.2010. The contract between the petitioner and respondents expired on 31.12.2010 and inspite of request, the respondents refused to extent the period for allotment of plot, which prevented the petitioner from moving 1840 MT of iron ore lying within the plot in the premises of the respondents.

4. It is the further case of the petitioner that in pursuance to the filing of W.P. No.11747/2002 alleging environmental pollution caused by the respondents, this Court, vide order dated 11.5.2011 directed the respondents



W.P. No.329/2018

WEB COPY

to stop handling export of iron ore and coal. Consequent upon the aforesaid order, 1840 MT of coal belonging to the petitioner, which was lying in the plot of the respondents could not be moved. Though the petitioner, as per clause 15 of the agreement had submitted furtherance of the period allotment by filing separate application, however, the respondents had not granted the renewal.

5. It is the further case of the petitioner that due to the order passed by this Court, any act on the part of the petitioner to move the cargo would be an act in contempt, but the respondents had power to move the cargo and vacate the plot, which was not done. It is the further case of the petitioner that a meeting was called for by the respondents with all the parties for vacating the plot and removing the balance cargo after rejecting the request from the plot holder and further informed its inclination to levy demurrage charges from 1.1.2011. Though eviction notice was issued as early as on 4.4.2012, the respondents did not take any action to dispose of the 1840 MT of cargo lying in the plot and the respondents auctioned the same only during November, 2013 and information of the same was given to the petitioner only



W.P. No.329/2018

WEB COPY

in March, 2014. The delay on the part of the respondents in auctioning the cargo, cannot be put against the petitioner to claim demurrage, penalty, etc., from the petitioner.

6. It is the further case of the petitioner that the petitioner was barred from removing the cargo in view of the order passed by this Court in W.P. No.11747/02, however, the respondents could have moved the same, but in spite of issuance of notice under the Public Premises Act, the respondents have not taken any steps, but the respondents issued the letter dated 1.3.2014 informing the petitioner of the auction of the cargo for a value of Rs.74,52,000/-. The petitioner, being the owner of the iron ore, called upon the respondents vide letter dated 12.3.2014 to remit the amount realised in the auction, which was not acted upon by the respondents. In spite of repeated communication, no action was taken by the respondents.

7. It is the further case of the petitioner that when the matter stood thus, out of the blue, the impugned order was passed by the respondents



W.P. No.329/2018

WEB COPY

demanding a sum of Rs.77,26,551/- from the petitioner towards plot rent and demurrage charges till 17.9.2014, including auction expenses.

8. It is the case of the petitioner that the orders passed by this Court prevented the petitioner from entering into the plot and moving the iron ore, which was auctioned by the respondents on 6.11.2013. The said factum also being admitted by the petitioner, the respondents cannot recover plot rent and demurrage charges for the aforesaid period. The act of the respondents is wholly arbitrary, perverse and illegal, which has resulted in the filing of the present writ petition.

9. Learned senior counsel appearing for the petitioner submitted that the order of the High Court having prevented the petitioner from removing the iron ore, which fact was also within the knowledge of the respondents, the respondents bound to have given the benefit to the petitioner by not trying to recover the rent and demurrage charges. It is the further submission of the learned senior counsel that the order of this Court having prevented the petitioner from exporting the left over iron ore in the plot, the same would fall



W.P. No.329/2018

WEB COPY

under the force majeure clause contained in the agreement, the invocation of which would enure to the benefit of the petitioner, thereby, the respondents would not be entitled to recover any amount towards rent and demurrage charges.

10. It is the further submission of the learned senior counsel that the Supreme Court of India having banned the exports of iron ore originating from Karnataka, the petitioner was prevented from removing the left over iron ore. However, the respondents could have removed the iron ore and cleared the plot, but they did not do so and for the said inaction on the part of the respondents, the petitioner should not be penalised. Further, it is the submission of the learned senior counsel that the disposal of the iron ore in public auction without putting the petitioner on notice is grossly illegal and the proceeds received through the said auction should be returned back to the petitioner. Accordingly, learned senior counsel prays for quashment of the impugned order of demand and resultant refund of the amount realised by way of auction.



W.P. No.329/2018

WEB COPY

11. Per contra, learned standing counsel appearing for the respondents, relying upon the counter filed by the respondents submitted that the ban of moving iron ore was issued by the Government of Karnataka after it came to light that rampant illegal mining is taking place and that under the guise of moving stored iron ore, illegal iron ore is being substituted and moved. Towards finding out the same, investigation was carried out in which the petitioner firm was found to have been involved in illegal mining activities, which was the reason that the iron ore could not be exported nor moved.

12. It is the further submission of the learned standing counsel that the operation of the orders of this Court as also the Division Bench of the Karnataka High Court and the Supreme Court would in no way fall under the force majeure clause found in the agreement, as the reason for such a ban was the activity of the petitioner and persons similarly situated and only to curb the illegal mining activity, the ban was imposed.

13. It is the further submission of the learned standing counsel that eviction notice under the relevant provisions of law were issued to all the



W.P. No.329/2018

WEB COPY

persons, including the petitioner to vacate the premises and the petitioner ought to have vacated the premises. However, citing the aforesaid ban, the petitioner has not taken any steps, even to the extent of not approaching this Court to remove the iron ore citing the eviction notice. Therefore, the act of the petitioner in not moving diligently cannot be put against the respondents and the act of the respondents in auctioning the iron ore and also levying demurrage charges and rent cannot be found fault with. Accordingly, learned counsel prays for dismissal of the present petition.

14. This Court paid its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

15. There is no dispute about the agreement entered into between the petitioner and the respondents. Equally it is not disputed that ban on export and movement of iron ore was in operation by virtue of orders passed either by this Court or the Karnataka High Court and the Supreme Court. Due to the operation of the aforesaid ban, the petitioner could not move the iron ore. By



W.P. No.329/2018

then, the period under the agreement was over and the agreement was not renewed, which resulted in the issuance of notice to the petitioner to vacate the premises. The aforesaid factum of the case is not disputed by the parties.

16. The whole case rest on the contention that the orders of this Court and the Supreme Court was an embargo for the petitioner to move the iron ore and it is not due to the fault of the petitioner that the iron ore was not moved and, therefore, the aforesaid act would squarely fall within the force majeure clause in the agreement and, therefore, the petitioner is not required to pay any charges towards rental and demurrage. Further, in the aforesaid backdrop, the act of the respondents in auctioning the iron ore is bad, that too without the concurrence of the petitioner and, therefore, the respondents are liable to refund the amount realised in the auction.

17. The whole gamut of the case falls under the force majeure clause, which is found in the agreement and for better appreciation, the same is extracted hereunder :-

“14. If the targeted throughput of the Licensee happens to be affected for more than 15 days continuously by means of



W.P. No.329/2018

WEB COPY

natural calamities or stoppage of work on account of strike by Trust's employees or major shut down of plant or other reason which deemed fit, the proportionate drop in the throughput during the period will be taken into account and shall be considered under Force Majeure Conditions."

18. In the backdrop of the aforesaid clause, the only issue that falls for consideration is whether the order of the courts banning the removal of iron ore from the premises of the respondents would fall within the force majeure conditions, thereby, entitling the petitioner to the force majeure benefits.

19. To address this issue, a careful perusal of the materials available on record reveal that rampant illegal mining by very many persons had resulted in the Government of Karnataka banning mining of iron ore and also movement of iron ore. In fact, the Government of Karnataka had also appointed investigation of the illegal mining under the Karnataka Lokayukta Act by appointing a Retired Hon'ble Judge of the Supreme Court and an interim report has also been filed on 18.12.2008. The sum and substance of the report is that illegal mining activities are carried out by the mining leasers and iron ore to the tune of about Rs.60,000/- crores for the year 2007-2008



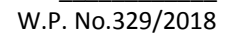
W.P. No.329/2018

WEB COPY

were earned and that there are large scale encroachments on Government lands. The report also proceeds that almost all lorries engaged in carrying minerals were overloaded far in excess of the permissible limits and that the legally mined iron ore was mixed with illegally mined ore. Further, the illegal miners stacked the iron ore illegally in the Ports and violated the Indian Ports Act. The aforesaid details are filed by the respondents in their counter. However, the petitioner had not thought it fit to rebut any of the contentions placed in the counter.

20. In the aftermath of the said report, the High Court of Karnataka had upheld the ban of illegal mining and the ban of export of iron ore, imposed by the Government of Karnataka was affirmed by the Division Bench of the High Court. The aforesaid facts have not been disputed by the petitioners. What is furthermore to be pointed out is the fact that it is the case of the respondents that the petitioner firm was also involved in illegal mining activities.

21. Be that as it may. This Court, in W.P. No.11747/02, filed as a public interest litigation in respect of the pollution caused by the Port Trust due to



13



W.P. No.329/2018

WEB COPY

22. It is to be pointed out that the illegal mining and the pollution caused to the atmosphere on account of moving the iron ore had resulted in the ban on illegal mining and movement of iron ore. The act perpetrated in causing damage to the environment had invited the wrath of the Courts in passing the aforesaid order. The said orders could in no way fall under the force majeure conditions contemplated under the Agreement and the case of the petitioner to invoke the force majeure conditions is an ingenious attempt on the part of the petitioner, through able counsel to absolve itself of its obligation to pay the dues payable to the respondents.

23. A careful perusal of the force majeure clause in the agreement shows that what would fall within the force majeure conditions is only acts on account of natural calamities, stoppage of work on account of strike by Trust's employees, major shut down or plant or other reason which deemed fit. The order of ban imposed on the mining and movement of iron ore by the Courts could in no way be termed to be a force majeure condition, which could be invoked for the purpose of granting any benefit to the petitioner. The reason for inviting the order from the Courts is only on account of certain illegal acts



W.P. No.329/2018

WEB COPY

perpetrated in illegally mining the iron ore. It is a man-made disaster and force majeure conditions could only be on account of natural calamities or acts, which are within the purview of the respondents and it cannot be extended to acts perpetrated by the petitioner or persons like the petitioner. The '*other reason which deemed fit*' found in the agreement in the force majeure clause would definitely not take within its fold the order of ban or stay passed by the judicial forums. If any such interpretation is given, it would have far reaching ramifications in the law of contracts and agreements and it would spell disaster in discharging the contractual obligations. Therefore, the contention of the petitioner that there existed a force majeure condition is wholly erroneous and it is nothing but an ingenious attempt weaved in the intellectual mind of the counsel to enable the petitioner to wriggle out of its obligation to pay the rent and demurrage charges. Therefore, the said contention is liable to be rejected.

24. Insofar as the contention relating to refund of the amount which has been realized on account of the auction of iron ore, the act of the petitioner in not adhering to the notice of eviction and moving the materials



W.P. No.329/2018

WEB COPY

from the plots assigned to it, the respondents was fully within their power to auction the iron ore and realize the amount towards the due payable to it. Therefore, the claim of the petitioner for refund of the amount realized by way of auction is not sustainable and, accordingly, the same is rejected. The consequential order demanding payment of the balance demurrage charges and rent is also justifiable, in view of the reasoning aforesaid and the same does not warrant any interference at the hands of this Court.

25. For the reasons aforesaid, this writ petition is devoid of merits and, accordingly, the same is dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

28.04.2023

Index : Yes / No

GLN

To

1. The Chairman
Chennai Port Trust
Rajaji Salai, Chennai 600 001.



W.P. No.329/2018

WEB COPY

2. The Chief Mechanical Engineer
Chennai Port Trust
Rajaji Salai, Chennai 600 001.



WEB COPY



W.P. No.329/2018

M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NO.329 OF 2018**

**Pronounced on
28.04.2023**