



W.P(MD)No.5605 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5605 of 2015

and

M.P.(MD)No.1 of 2015

M/s.Tuticorin Alkali Chemicals, & Fertilizers Ltd.,
SPIC House, 88, Anna Salai, Guindy,
Chennai – 600 032,
and its Factor at Harbour Construction Road,
Tuticorin, Rep. by its Company Secretary. ... Petitioner

Vs.

1.Tuticorin Port Trust,
Rep. by its Chairman,
Port Trust,
Tuticorin – 618 004.

2.The Deputy Chairman and Estate Officer,
V.C. Chidambaranar Port Trust,
Tuticorin. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the order dated 07.11.2014 in Ref.No.E(C)-25/01/2006/EST/D.3412 and dated 02.02.2015



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Ref.No.E(C)-25/01/2006/EST/D.355 of the 2nd Respondent and order dated 08.04.2015 in No.E (C)-25/1/2006-EST/1473 of the 2nd respondent and quash the same.

For Petitioner : Mr.A.R.Sundarasean, Senior Counsel,
For Mr.C.Mahadevan.

For Respondents : Mr.V.R.Shanmuganathan,
Standing Counsel.

ORDER

Heard the learned senior counsel for the writ petitioner and the learned standing counsel for Tuticorin Port Trust.

2.The petitioner was allotted port land in the year 1979 on long term lease basis for a period of 30 years. Issue arose between the parties as regards revision of lease rent. Vide communication dated 07.11.2014, the petitioner was called upon to pay the lease arrears of Rs.36,16,57,229/-. It was also stated that the port will resort to tender-cum-auction. This was followed by yet another communication dated 31.11.2015 whereby the petitioner was reminded of their obligation to



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clear the dues. Challenging these communications, the present writ petition came to be filed.

3. During the pendency of this writ petition, following negotiation between the parties, the port trust scaled down their demand for payment of interest to 15% per annum. Interest was to be calculated on simple interest basis. Earlier, the liability of the petitioner was determined by compounding the interest liability. The learned senior counsel states that the principal amount set out in the impugned communications has since been paid. It is further stated that the petitioner is negotiating with the respondent authorities for further scaling down the interest rate from 15% to 6%. The petitioner is ready to clear the entire arrears in six monthly installments, if the interest rate is reduced to 6% per annum.

4. Vide order dated 19.09.2023 in W.P.(MD)No.2918 of 2015, I had held as follows:-

“4. This Court granted an interim order on condition that all the pending dues should be settled. The entire dues were also settled. The only issue that calls for consideration is



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whether the petitioner can take over the possession of the petition-mentioned plots. My attention has been drawn by the learned Standing counsel to the Land Policy Guidelines for Major Ports – 2014 issued by the Ministry of Shipping, Government of India. Clause 16.3 (c) is as follows:-

“16.3. Renewal of Existing Leases:

(a) ...

(b) ...

(c) During the process of renewal of existing leases, the Port is required to differentiate between those lease-agreements that stipulate automatic renewal and those that do not provide for such automatic renewal at the end of the leaseperiod. In cases of renewal of existing leases, without automatic renewal option at the end of the lease-term, the land will be put to tender-cumauction 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 structures 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 updated / latest market value 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 updated / latest market value notified as per Para 18(c) or the price quoted by the existing lessee in the tender-cumauction, whichever is higher.”



5. *From a reading of the aforesaid clause, one can notice that if the lease agreement does not have automatic renewal at the end of the lease term and if the land has to be brought to tender-cum-auction, instead of straightaway awarding to the highest bidder, the existing lessee must be given the right to match H-1 bid. The existing lessee also will have the right of refusal.*

6. *The impugned order is interfered with only to a limited extent. The petitioner need not hand over the land to the port considering the special facts and circumstances obtaining in this case. The petitioner had shown their bonafides by settling the entire due amount demanded in the impugned communication. For the last nine years, they are in possession. The port trust shall conduct tender-cum-auction in respect of the petition-mentioned plots. The petitioner will be given the right to match H-1 bid. If the petitioner matches H-1 bid, they can continue to be in possession of the plots. If the petitioner exercises the right of refusal, the petition mentioned plots will have to be surrendered within a period of eight weeks thereafter. The question of issuing fresh notice does not arise at all. This writ petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.”*



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5.In view of the subsequent developments, the challenge to the impugned communications may not really survive. The writ petition is disposed of in the following terms:-

(I) It is for the petitioner to pursue the request made vide representation dated 31.05.2017 and it is entirely for the port trust management to take a call in the matter.

(II) It is open to the port trust to bring the petition mentioned port land to tender-cum-auction and since the petitioner is the existing lessee, they will have right to match H-1 bid. This right to match H-1 bid will be available only if the petitioner clears the dues that will be quantified by the port trust authorities after passing an appropriate order on the request made by the petitioner vide letter dated 31.05.2017. The petitioner will be dealt with on identical lines. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes / No
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