

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT JAMMU**

OWP No.784/1996, CMA No.D-1183/2013

Date of Decision:06/08/2014

**M/s.Shankar Timber Products                      VS                      State and ors.**

Coram:

**Hon'ble Mr. Justice Bansi Lal Bhat, Judge**

**Appearing Counsel:**

For Petitioner(s)                      :Mr. Surinder Singh, Advocate.

For Respondent(s)                      :Mr.Salim Malik, GA.

Whether approved for reporting in law journals?                      :                      **Yes/No**

Whether approved for publishing Press/Media ?                      :                      **Yes/No/Optional**

1. Through the medium of this writ petition, petitioner seeks the following reliefs:-

- i) A writ of Mandamus commanding the respondents to allow the petitioner firm to cut, convert and transport the remaining Eucalyptus and popular trees so allotted to the firm. The respondents be further directed to release the timber/wood unauthorizedly seized by them worth lacs of rupees, part of which have been reported to be mis-appropriated and the remaining have been useless for the use in the manufacture of plywood.
- ii) Respondents be directed to pay Rs.7.0 lacs as damages suffered by the petitioner firm from the illegalities, atrocities and wrongs committed by the erring respondents.

2. Petitioner's case is that vide order No.51 of 1995 dated 21<sup>st</sup> February, 1995, Government of Jammu and Kashmir ordered to auction eucalyptus and poplar trees planted by Social Forestry Department outside

the demarcated forests. Respondent No.4 issued Auction Notice in terms of his Order dated 22<sup>nd</sup> February, 1995 in this regard. Open auction of standing trees of eucalyptus and poplar in separate lots was required to be conducted on 15<sup>th</sup> March, 1995. Petitioner emerged as the successful bidder for lots No.1 to 6, Jammu. Work order No.18-20 dated 04.04.1995 was accordingly issued in his favour by the Regional Director of Social Forestry Department. After completing all formalities and making deposit of auction amount in full, petitioner engaged skilled and unskilled labourers and started work of felling/conversion and transportation of marked trees allotted to him. Form No.25 was issued by respondent no.4 for purposes of carriage and transportation of wood. According to petitioner, part of the total work allotted to him was executed and the remaining work was at its full swing when respondents No.5 and 6 started interfering in execution of work allotted to petitioner. The matter was reported to Regional Director, Social Forestry Project, Jammu after about 60 trolleys of timber extracted from the working site of petitioner was seized by respondent no.6 and dumped in the office premises of respondent no.6. The Regional Director vide his communication dated 17.08.1995

addressed to respondent no.6 requested the latter not to stop the work allotted to petitioner. However, despite written and verbal request of petitioner, respondent no.6 did not relent. Petitioner, alongwith some other allottees of similar works, filed OWP No.607/1995 for redressal of their grievances. Respondents 1, 3 and 4 admitted the allegations of petitioner and others leveled in the writ petition. It was at the admission stage that a consensus emerged between the parties that the petitioner's grievances could be considered and resolved by the two Commissioners/Secretaries of Forest Department and Public Works Department. An order came to be passed in the writ petition on 12.04.1996 to that effect. It is the further case of petitioner that he submitted his written representation to the Commissioner/Secretary - Works Department, who was required to consider the same within three weeks. However, no decision was taken on the representation of petitioner despite lapse of considerable time with the result that the seized timber has decayed and become useless causing damage to the tune of lacs of rupees to the petitioner who had got the work allotted in his favour for supplying raw material to his plywood unit which came to a standstill and is facing closure.

3. Respondent No.4 filed objections pleading that the petitioner was allotted work being one of the successful bidders. However, execution of work was objected to by the officials of Irrigation and Flood Control Division to whom communication was addressed for permitting the petitioner to complete the execution of aforesaid work order. Respondent no.4 was, however, unaware of the decision taken in the meeting between Commissioner-PWD and Secretary-Forest Department in pursuance to directions of this Court.
4. Respondent Nos.5 and 6 while admitting allotment of work to petitioner pleaded that the auction pertains to trees marked by the Social Forestry Department and contractors including the petitioner were authorized to cut only those trees as were specified in the allotment order. It was further pleaded that the contractors including the petitioner were indulging in indiscriminate felling wherein even small trees had not been spared and such indiscriminate felling was causing damage to the canal. It was pleaded that the petitioner was involved in cutting down of green trees which were raised for protection and strength of the Ranbir Canal. It was found that the felling was done only by the contractors. The land on which the trees were standing belonged to the Irrigation and Flood

Control Department. It is further pleaded that the contractors were to cut only 15% of the trees out of total marking in lots identified by the social Forestry Department. However, the petitioner cut Keekar, Sheesham and poplar trees along the canal causing damage to the canal banks. Therefore, the trees indiscriminately felled by the contractors were seized by the Department. Same was done upon directions of canal officer to implement provisions of J&K Irrigation Act. Respondent Nos.5 and 6 admitted the factum of disposal of earlier writ petition filed by petitioner and others in which this Court had directed Commissioner Secretary to Government Public Works Department to consider the matter and pass appropriate orders within a period of three months. Reiterating the stand taken in objections, in their counter-affidavit, the respondents further pleaded that in compliance to the directions passed by this Court in earlier writ petition, a meeting between Commissioner-PWD and Secretary-Forest Department was held on 08.10.1996 wherein the following decisions were taken:-

- i) Work allotted to authorized contractor be allowed to go ahead;
- ii) Secretary to Government-Forest Department may furnish a list of fallen plantation and timber quantity of timber fallen, which included Sheesham and Kikar trees, also needs to be indicated.

5. It was further pleaded that on 25.09.2006, Director Social Forestry Project again allowed the contractor to fell/remove the remaining standing 71 trees existing in the strip plantation village wood lot No.06 Muralia Dak Bungalow to Darap of Social Forestry Division Jammu. Thus, the grievances of petitioner had been redressed and the writ petition had been rendered infructuous.
  
6. In the rejoinder/supplementary affidavit filed by the petitioner, it is stated that the petitioner was not allowed to place his case before the Committee as per the directions of this Court which forced him to file writ petition No.784/1996. It is claimed that neither the outcome of meeting held between Commissioner/ Secretary PWD and Secretary to Government Forest Department was communicated to petitioner nor was the petitioner allowed to restart his work and transport the fallen timber seized by respondent nos.5 and 6 including the 60 trolleys of timber unauthorizedly seized by them. The minutes of meeting were not placed before the Court for a decade. Thus, rules of natural justice were violated. According to petitioner, he was allotted a total number of 3698 trees amounting to 16216.64 CFT, average of 1 tree being approximately 4.38 CFT. Petitioner further stated in

the counter affidavit that at the time of stoppage of work by respondents Nos.5 and 6, almost 75% of trees were cut and were lying on spot while the remaining 25% were in standing position. Petitioner further stated in the counter affidavit that out of total volume of 16216.64 CFT, the petitioner was allowed to transport only 2396.64 CFT, while balance timber being 13820 CFT was lying with the respondents at the site when the work was stopped. Petitioner has provided description of Form 25 numbering 65 in terms whereof he was allowed to transport 2396.64 CFT from the site. According to petitioner, the seized timber has become useless for him as the same has gone dry and become useless for manufacturing of ply board. He claims refund of auction amount besides compensation of Rs.7.00 lacs on account of loss suffered by him.

7. Heard and considered.

8. It emerges from the judgment rendered in OWP No.784/1996 dated 14.07.2008 that the facts asserted by petitioner in the petition that 60 trolleys of its felled timber had been unauthorizedly taken away by Executive Engineer - Irrigation and Flood Control Department, Jammu and dumped in its office stood uncontroverted. The State undertook to resolve the

dispute by passing an order on the report of Commissioners of Forest and Public Works Department. The Social Forestry Department brought on record the Order dated 25.09.2006, in terms whereof petitioner was allowed to fell/remove the remaining standing 71 trees existing in strip plantation/village wood lot No.06-Moralia to Dak Bungalow to Darap of Social Forestry Jammu. However, no decision was taken by Government in regard to the trees felled by petitioner as permitted by Social Forestry Department, timber whereof was later seized and removed by Irrigation and Flood Control Department. The plea taken by Irrigation and Flood Control Department in regard to timber seized by it to the effect that the same had been taken away by the Social Forestry Department through its Contractor was not found to be substantiated by record produced for inspection of the Court. Thus, respondents 5 and 6 failed to justify their act of seizing the timber which belonged to the Social Forestry Department which had permitted the petitioner to fell and transport it in his capacity as the allottee being the highest bidder. Court arrived at the conclusion that the functionaries of Irrigation and Flood Control Department had either misappropriated the seized timber or the same got



damaged with the passage of time. An enquiry was accordingly desired in the matter. Finding that respondents 5 and 6 had acted illegally in depriving the petitioner of the timber which it had purchased in the auction and which had become its property, respondents 1, 2, 5 and 6 were held liable to compensate the petitioner for the loss caused to it. Determination of compensation payable to petitioner for being deprived of 60 trolleys of timber was ordered to be done by learned Principal District Judge, Jammu who was required to afford reasonable opportunity of hearing and for leading evidence by the parties, record its finding and submit the same to this Court. On the strength of unrebutted evidence adduced by petitioner before learned Principal District Judge, Jammu, the latter found that the petitioner was entitled to compensation to the tune of Rs.5.00 lacs in *lump sum* with interest compounded at the rate of 6.5% per annum with effect from April, 1995. In coming to this finding, learned Principal District Judge, Jammu noticed that the petitioner had purchased the trees/timber for manufacturing of ply-board and he had taken advance money from various agencies for supply of ply-board but he had to indemnify them as he failed to supply ply-board on account of non-

availability of raw material/timber seized by the Irrigation and Flood Control Department. He also noticed that the petitioner had invested amount on engaging of skilled labourers for cutting and felling of trees and on arranging of transport. It was also found that the petitioner had to incur expenditure on litigation related to the case. Taking into account the cost factor and the profit component available after fashioning the timber into ply-board, learned Principal District Judge came to conclusion that the petitioner had suffered loss to the tune of Rs.7.00 lacs in 1996. On consideration of all relevant factors, learned Principal District Judge was of the opinion that compensation to the tune of Rs.5.00 lacs together with interest at the rate of 6.5% per annum with effect from April, 1995 would be the appropriate compensation payable on account of loss suffered by petitioner.

9. Respondents 5 and 6, in their response to the Report of learned Principal District Judge, Jammu did not dispute seizure of 60 trolleys of timber by respondents 5 and 6. However, they pleaded that the loss occasioned to petitioner was not the direct result of seizure of timber by respondents 5 and 6. It was further pleaded that the presumptive loss of profit which the petitioner would have earned by utilizing the

timber in the manufacture and sale of ply-board could not be allowed. Respondents 5 and 6 placed on record 18 Number of copies of Challans of SFC showing release of timber in favour of contractor/petitioner which, however, does not dilute the petitioner's claim in regard to compensation for loss suffered on account of seizure of about 60 trolleys of timber by respondents 5 and 6 without any legal justification.

10. It is not disputed that the claim of petitioner before the fact-finding forum of learned Principal District Judge Jammu has gone unrebutted. The evidence adduced by petitioner unmistakably shows that the petitioner had been allotted the work of felling trees belonging to Social Forestry Department for which he had to engage skilled labour and arrange transportation from the embankment of canal to his factory premises where the felled timber was to be utilized for manufacture of ply-board. It has been found that about 60 trolleys load of felled timber was seized and removed by the Irrigation and Flood Control Department which has not been accounted for. The loss suffered by petitioner, in the context of award of compensation, cannot be delinked from the purpose for which the petitioner had offered the highest bid for purchase of trees. The timber available from the felled

trees being the raw material required for manufacture of ply-board only when such timber was transported to factory in wet condition and the loss suffered on account of choking of supply line of raw material to the ply-board manufacturing unit of petitioner being the determinative factor in arriving at quantum of compensation, it cannot be said that the finding recorded by learned District Judge is unjustified. Learned Principal District Judge, Jammu quantified the loss at Rs.5.00 lacs though the petitioner claimed the same to the tune of Rs.7.00 lacs. The award of interest at the rate of 6.5 per cent with effect from April, 1995 is also justified as the loss occasioned to petitioner is referable to the time when such loss was occasioned on account of illegal seizure and removal of timber load of about 60 trolleys by Irrigation and Flood Control Department which had been felled by the petitioner lawfully in execution of allotment order. The objections raised by respondents 5 and 6 are accordingly repelled.

11. In view of the foregoing discussion, the finding recorded by learned Principal District Judge Jammu in terms of direction passed by this Court on 14.07.2008 is accepted. The petition is allowed. Respondent No.1 through respondent no.2 and respondents No.5 and 6

are held liable to pay compensation to petitioner for the loss suffered on account of illegal seizure of timber load of about 60 trolleys of petitioner quantified at Rs.5.00 lacs together with interest at the rate of 6.5% per annum payable with effect from April, 1995, such payment being made within three months from today.

12. Record be sent back.

**(Bansi Lal Bhat)**  
**Judge**

**Jammu**

06.08.2014

Varun Bedi