



2) The relevant facts as culled out from the affidavit filed in support of the writ petition may briefly be stated as follows:

3) The petitioner entered into an agreement of sale with the 5<sup>th</sup> respondent to purchase a Tug by name Hemavathi for Rs.1,05,00,000/- on 29.10.2018 and paid the total sale consideration and an amount of Rs.80,000/- in addition to the same. Due to disputes between the petitioner and the 5<sup>th</sup> respondent, the petitioner filed a suit in COS No.9 of 2021, on the file of the Commercial Court, Visakhapatnam, seeking decree against the 5<sup>th</sup> respondent to transfer the Registration of the said Tug in the name of the petitioner, before the Registrar of Indian Ships, Mumbai and for other reliefs. The 5<sup>th</sup> respondent is contesting the said suit. Due to said dispute, the petitioner sought an interim injunction against the 5<sup>th</sup> respondent, whereas the 5<sup>th</sup> respondent filed a petition to return the plaint on the ground of jurisdiction. The Commercial Court dismissed the application of the 5<sup>th</sup> respondent and granted interim injunction in favour of the petitioner. Due to pendency of the litigation, the said Tug could not be utilized by the petitioner as it had not got the full rights of the title / transfer and as such the same is lying idle in the shore. While that being the position, the 4<sup>th</sup> respondent issued the impugned notice calling upon the petitioner to liquidate

the outstanding dues of Rs.10,05,143/- and expressing its intention to auction the tug if the amount is not paid. Challenging the said notice the petitioner filed the present Writ Petition.

4) At the time of admission, a learned Judge of this Court after hearing both sides, by an order dated 16.08.2023, directed the respondent authorities not to auction the Tug, if not already auctioned, for a period of four (04) weeks. Subsequently, the said order was extended on 14.09.2023 for a further period of eight (08) weeks.

5) Heard Mr.P.RajeshBabu, learned counsel for the petitioner and Mr.P. Patanjali, learned counsel appearing on behalf of P. Sri Ram, learned standing counsel for the respondents 3 and 4.

6) Learned counsel for the petitioner while referring to the various contentions raised in the Writ Petition submits that the demand as raised by the 4<sup>th</sup> respondent through the notice impugned in the writ petition is unjust and amounts to arbitrary exercise of power. He submits that the said demand has been raised without any valid basis only at the behest of the 5<sup>th</sup> respondent. Referring to various payments, as shown in the table at para 10 of the affidavit, learned counsel submits that the petitioner has been regularly making the berth hire charges at Rs.17,274/- per month, though there is no standard basis for

collection of the same. He submits that to the petitioner's dismay, the 4<sup>th</sup> respondent started imposing penalty of five times on the monthly berth hire charges of Rs.17,274/- from January, 2023 onwards. He contends that the penalty of Rs.90,000/- per month is without any valid basis or authority, unlawful, highly excessive and wholly unsustainable. He submits that as the 4<sup>th</sup> respondent had issued the impugned demand notice without taking into account of the previous payments made by the petitioner in excess, which are lying with the 4<sup>th</sup> respondent and the representations of the petitioner in this regard were not considered and as the 4<sup>th</sup> respondent is bent upon to proceed with the auction, the petitioner being left with no other alternative, filed the present Writ Petition.

7) On the other hand, learned counsel for the 4<sup>th</sup> respondent made submissions with reference to the provisions of Indian Port Act, 1908 (for short "the Act"). He submits that various averments made in the affidavit filed in support of the writ petition are not correct. He submits that the subject matter Tug arrived at the Fishing Harbor Jetty at Visakhapatnam Port on 16.05.2019 under the ownership of the 5<sup>th</sup> respondent and thereafter it is sold to the petitioner company. He submits that the said Tug has been idle at the Fishing Harbor Jetty since the date of its arrival and has

not been involved in any business meant for fishing harbor, thereby causing hindrances to the other fishing boats as well. He submits that considering the request made by the petitioner to permit it to carry out repair works in respect of the said Tug, ample time was granted to the petitioner to vacate the Fishing Harbor Jetty for the purpose of repair works and the port had stopped levy of penalty at 5 times of berth hire charges during the said period. He submits that the petitioner failed to vacate the Fishing Harbor Jetty and fell in arrears of berth hire charges. He submits that after issuing number of notices and affording adequate opportunity to the petitioner, the 4<sup>th</sup> respondent had issued notice impugned in the Writ Petition. He submits that the 4<sup>th</sup> respondent received a letter dated 03.02.2024 from the Fishing Harbor Section informing that the said Tug is lying in the 1 and 2 jetty of fishing harbor and water is entering into the Tug, due to which it is sinking. He submits that if the Tug sinks into the water it would be difficult to rescue the same and it has to be dredged out. He submits that the dredging of the Tug would involve huge expenditure apart from causing inconvenience to the fishing harbor activities. He submits that unless the interim order granted by the Court is suitably modified, the 4<sup>th</sup> respondent /

Visakhapatnam Port Authority would suffer operational hurdles in the fishing harbor activities.

8) Referring to Section 14 of the Act, which provides for raising or removal or wreck impeding navigation within limits of Port, he submits that if the vessel is wrecked, stranded or sunk in the port, the same is required to be immediately raised and even destroyed without any notice also to the owner of the vessel. He submits that in terms of Section 42 of the Act, the port has power to detain the vessel in respect of which any port dues, fees or other charges payable under the Act are not cleared, until the said amounts due are paid. He also submits that the port is also empowered to sell the vessel if the said dues are not paid. He submits that the Visakhapatnam Port Trust is a statutory authority and it can levy berth hire charges and imposition of penalty thereon is in accordance with the Scale of Rates fixed as per the operational policy for Major Ports Authorities Act, 2021 and prior to that all the major ports were governed by the provisions of Major Ports Trust Act, 1963, under which statute the Tariff Authority for Major Ports was fixing the tariff. He submits that in the present case the demand as raised in the impugned notice is in accordance with law and the contentions contra are not sustainable. Be that as it may. The learned counsel, while drawing attention of this Court

to the photographs filed along with the counter affidavit, submits that unless the 4<sup>th</sup> respondent is permitted to auction the Tug and keep the sale proceeds in Fixed Deposit, pending disposal of the Writ Petition, the subject matter Tug would sink into the sea and costs of rescue operations, dredging etc., would have to be borne by the petitioner. Making the said submissions the learned counsel seeks appropriate directions.

9) In reply, learned counsel for the petitioner vehemently contended that there is no justification on the part of the 4<sup>th</sup> respondent in demanding the berth hire charges in respect of the subject matter Tug, without reconciling the payments made by the petitioner. He submits that in fact the 4<sup>th</sup> respondent sought to collect the berth hire charges from the petitioner even for the period prior to its sale, instead of demanding the same from the 5<sup>th</sup> respondent. He submits that though the petitioner had paid the total amounts, which are due, the 4<sup>th</sup> respondent had not permitted the petitioner to move the tug and it is the 4<sup>th</sup> respondent which is solely responsible for the present situation. He submits that the petitioner is ready to move the Tug or to dismantle the same, at its own cost and the submission made by the learned counsel for the 4<sup>th</sup> respondent to permit it to auction the same, cannot be accepted. Learned counsel for the petitioner

further contends that if the 4<sup>th</sup> respondent is allowed to auction the Tug, it would not fetch more price. While stating that the writ petition has to be heard finally, learned counsel vehemently opposes the modification of the order dated 16.08.2023 and urges to make it absolute.

10) This Court has considered the submissions and perused the material on record. On appreciation of the rival contentions, the entire controversy is with regard to the 4<sup>th</sup> respondent levying the berth hire charges in respect of the Tug-Hemavathi, which is admittedly berthed at Visakhapatnam Port Fishing Harbour. It is not the case of the petitioner that the Visakhapatnam Port is not entitled to collect berth hire charges, but the demand raised is without any valid basis and apart from the same, imposition of five times penalty on the berth hire charges is arbitrary, unlawful, unjust etc. It is also the contention of the petitioner that berth hire charges are being levied unlawfully at the instance of respondent No.5, from whom the petitioner purchased the Tug in question, and the disputes with it are pending adjudication in COS No.9 of 2021, on the file of Commercial Court, Visakhapatnam. Whereas, it is the case of the 4<sup>th</sup> respondent that as the petitioner failed to vacate the Fishing Harbor Jetty by duly paying port charges i.e., berth hire charges as per the Standard of

Rates and after the prescribed period penalty of berth hire charges at 5 times of normal berth hire charges, in terms of the statutory provisions, are demanded. As to whether the demand raised by the 4<sup>th</sup> respondent is excessive, arbitrary etc., as contended by the petitioner or that the same is in accordance with the Standard of Rates, is a matter to be adjudicated finally.

11) However, taking into consideration of the submission made by the learned counsel for the 4<sup>th</sup> respondent with regard to the condition of the subject matter Tug, this Court is required to examine the matter as to whether the interim order dated 16.08.2023 needs to be modified?

12) It is not in dispute that the subject matter Tug is sinking into the sea. Leaving apart the reasons or the parties who are responsible for the present situation, the need of the hour is that this Tug has to be rescued otherwise it will sink into the sea and thereby huge expenditure has to be incurred for dredging the same out. While the learned counsel for the petitioner states that the petitioner would move the Tug from the port and dismantle the same, at the cost of the petitioner, the learned counsel for the 4<sup>th</sup> respondent contends that unless the port dues are cleared, the subject matter Tug cannot be permitted to be moved out of the port, in the light of the statutory prescriptions. In this regard, the

learned counsel for the 4<sup>th</sup> respondent placed reliance on Section 14 and 42 of the Indian Ports Act, which reads as follows:

14. Raising or removal or wreck impeding navigation within limits of port.— (1) If any vessel is wrecked, stranded or sunk in any port in such a manner as to impede or likely to impede any navigation thereof, the conservator shall give notice to the owner of the vessel to raise, remove or destroy the vessel within such period as may be specified in the notice and to furnish such adequate security to the satisfaction of the conservator to ensure that the vessel shall be raised, removed or destroyed within the said period:

Provided that the conservator may extend such period to such further period as he may consider necessary having regard to the circumstances of such case and the extent of its impediment to navigation.

(1A) Where the owner of any vessel to whom a notice has been issued under sub-section (1) fails to raise, remove or destroy such vessel within the period specified in the notice or the extended period or fails to furnish the security required of him, the conservator may cause the vessel to be raised, removed or destroyed.

(1B) Notwithstanding anything contained in the foregoing sub-sections, if the conservator is of the opinion that any vessel which is wrecked, stranded or sunk in any port is required to be immediately raised, removed or destroyed for the purpose of uninterrupted navigation in such port, he may, without giving any notice under sub-section (1), cause the vessel to be raised, removed or destroyed.

(2) If any property recovered by a conservator acting 4 under sub-section (1A) or sub-section (1B) is unclaimed or the person claiming it fails to pay the reasonable expenses incurred by the conservator under that sub-section and a further sum of twenty per cent of the amount of such expenses, the

conservator may sell the property by public auction, if the property is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than 5 [thirty days] after the recovery thereof.

(3) The expenses and further sum aforesaid shall be payable to the conservator out of the sale-proceeds of the property, and the balance shall be paid to the person entitled to the property recovered, or, if no such person appears and claims the balance, shall be held in deposit for payment, without interest, to any person thereafter establishing his right thereto:

Provided that the person makes his claim within three years from the date of the sale

(4) Where the sale proceeds of the property are not sufficient to meet the expenses and further sum aforesaid, the owner of the vessel at the time the vessel was wrecked, stranded or sunk shall be liable to pay the deficiency to the conservator on demand, and if the deficiency be not paid within one month of such demand the conservator may recover the deficiency from such owner in the manner laid down in sub-section (2) of section 57 for recovery of expenses and damages or in any other manner according as the deficiency does not or does exceed one thousand rupees.

42. Distraint and sale on refusal to pay port-charges.—If the master of any vessel in respect of which any port-dues, fees or other charges are payable under this Act, refuses or neglects to pay the same on demand, the authority appointed to receive such port-dues, fees or other charges may distrain or arrest the vessel, and the tackle, apparel and furniture belonging thereto or any part thereof, and detain the same until the amount due is paid;

and in case any part of the port-dues, fees or other charges or of the costs of the distress or arrest or of the keeping of the vessel or other thing distrained or arrested remains unpaid for the space of five days next after any such distress or arrest, may cause the vessel or other thing distrained or arrested to

be sold, and with the proceeds of such sale may satisfy the port-dues, fees or other charges and the costs including the costs of the remaining unpaid, and shall render the surplus, if any, to the master of the vessel upon demand.

Provided that where such vessel or other thing is already arrested under the order of a court or other authority, the authority appointed to receive port-dues, fees or other charges, may sell the vessel or other thing only with the prior permission of such court or other authority and satisfy the port-dues, fees or other charges and the costs including costs of sale remaining unpaid, and disburse the surplus, if any, in accordance with the orders or directions of such court or other authority:

Provided further that the person to whom the vessel or other thing is sold under this section shall be deemed to be the owner thereof and registered as such under the Merchant Shipping Act, 1958.

13) Thus, in the light of the above extracted statutory provisions, which are clear and unambiguous, this Court finds merit in the submissions made by the learned counsel for the 4<sup>th</sup> respondent and unless the petitioner succeeds in the writ Petition or clears the port dues, on determination of the validity or otherwise of the same it cannot be permitted to move the Tug. Further, the apprehension of the petitioner that if the 4<sup>th</sup> respondent is permitted to auction the subject matter Tug it would not fetch more price or likely to be sold for a lesser price, merits no appreciation. As seen from the impugned proceedings, the 4<sup>th</sup> respondent is proposing to auction the subject matter tug through

MSTC, a public sector undertaking (Mini Ratna Company). When it is by way of a public auction, the petitioner cannot have any objection or apprehension.

14) After thoughtful consideration of the matter, this Court is of the considered opinion that the interest of both the parties would be safeguarded if the interim order dated 16.08.2023 is modified. Taking into consideration of the legal as well as the factual position, this Court deems it appropriate to permit the respondent No.4 to auction the Tug in question.

15) Accordingly, the 4<sup>th</sup> respondent is permitted to auction the subject matter Tug-Hemavathi, through MSTC by giving wide publicity. Further, the 4<sup>th</sup> respondent shall keep the sale proceeds in a Fixed Deposit in any Nationalized Bank and shall not encash the same, pending disposal of the this Writ Petition, much less without the permission of this Court. Accordingly, the Interim Order dated 16.08.2023 is modified to the extent indicated above.

16) List the main Writ Petition for Final Hearing on 18.06.2024.

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**NINALA JAYASURYA, J**

Date:18.03.2024.

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