



W.P.(MD) No.6597 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2023

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.(MD) No.6597 of 2020

S.Sakunthala

... Petitioner

/vs./

**1.The Commissioner,
Municipal Administration,
Chennai.**

**2.The Commissioner,
Karur Municipality,
Karur.**

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 2nd respondent to return the lease security deposit of the petitioner for sum of Rs.5,00,000/- on the basis of the petitioner's representation dated 20.03.2020.

For Petitioner	: Mr.S.Gokulraj
For R1	: Mr.D.Ghandiraj
	Special Government Pleader
For R2	: Mr.K.Balasubramani



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ORDER

The issue, which is placed for consideration of this Court in this writ petition, is whether as per the terms of the e-auction notice the petitioner is entitled to refund of a sum of Rs.5,00,000/-, which has been deposited by him.

2.The facts preceding to the filing of the above writ petition are as follows:-

3.The petitioner had participated in the e-auction conducted by the second respondent herein for the lease of the shops situate in the mini bus-stand at Karur. The petitioner was declared as successful bidder by the second respondent in respect of shop No.7, vide his proceedings in Na.Ka.No.1456/2011/A6 dated 20.11.2015. The petitioner was directed to pre-deposit the rents for a period of 12 months totally for a sum of Rs.2,23,200/-. The terms of the e-auction notice would further stipulate that the second respondent has directed the petitioner either to show the property for a value of Rs.10,00,000/- or produce a solvency certificate for a sum of Rs.5,00,000/-. Since the petitioner was not able to produce the solvency certificate for Rs.5,00,000/-, she had executed a mortgage deed in favour of the second respondent in respect of her property in S.F.No.1151,



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measuring an extent of 6.44 acre at Kukanangkurichi Village, Karur District.

Thereafter, the second respondent was put in possession of the shop No.7 for a period of 9 years on condition that the rent could be enhanced by 15% every year.

The petitioner would submit that to date, she has been paying the rents without default.

4.Meanwhile, the petitioner had requested the second respondent to cancel the mortgage deed in lieu of which she had agreed to deposit a sum of Rs.5,00,000/- as security deposit. The same was also deposited on 18.07.2018 and thereafter, the second respondent had cancelled the mortgage deed vide cancellation deed registered as Doc.No.1471 of 2018. The petitioner was thereafter directed to produce the solvency certificate for a sum of Rs.5,00,000/- for administrative reasons.

5.On 09.07.2018, the petitioner had produced the solvency certificate and therefore, she requested for refund of a sum of Rs.5,00,000/- that she had deposited earlier. Despite several representations have been given, the respondents did not come forward to pay back the said sum. It is the case of the



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petitioner that the sum of Rs.5,00,000/- had been deposited by her by borrowing the amounts from her relatives. Since the respondents were reluctant to return the said amount, the petitioner has come forward with the present writ petition.

6.The second respondent has filed a counter affidavit *inter alia* contending that the tender condition is either to deposit a sum of Rs.5,00,000/- or establish solvency by executing a mortgage deed in respect of the immovable property to a value of Rs.10,00,000/- in favour of the second respondent. It is his case that since the mortgage had been cancelled, the petitioner cannot demand the refund of a sum of Rs.5,00,000/-. Therefore, they sought for dismissal of the said writ petition.

7.Heard the learned counsels appearing on either side.

8.They have been put across the very same contentions as set out in their respective pleadings. The crux of the dispute revolves around the following Clause contained in the e-auction notice.



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“.....கடைகட்டிடம் ஒவ்வொன்றிற்கும் ரூ.10.00லட்சம் மதிப்புள்ள சொத்து மதிப்பு சான்றிதழ் ஒப்படைக்க வேண்டும். ஏலம் உறுதி செய்யப்பட்டபின்னர் சொத்துமதிப்பினை ஆணையர் பெயருக்கு அட்டாச்மெண்ட் செய்து தரவேண்டும். சொத்து மதிப்பு சான்றிதழ் இல்லாதவர்கள் ரூ.5,00,000/- (ரூபாய் ஐந்து லட்சம் மட்டும்) பொறுப்புத் தொகையும் கீழேகுறிப்பிட்டுள்ள ஏல முன்வைப்புத் தொகையும் ஏலத் தேதிக்கு முந்தினம் 17-11-2015ஆம் தேதி செவ்வாய்கிழமை மாலை 4.00 மணிக்குள் நகராட்சி கருவூலத்தில் செலுத்த வேண்டும்.....”

9.From the above Clause, it is seen that the condition that has been stipulated is that the petitioner should give the solvency certificate to the tune of Rs.10,00,000/- and after the auction is confirmed, this solvency certificate has to be made over in favour of the Commissioner. Where the person is unable to obtain the solvency certificate for a sum of Rs.10,00,000/-, then in such cases, he shall deposit a sum of Rs.5,00,000/-.

10.In the instant case, since the petitioner was unable to produce the solvency certificate, he had given a mortgage in favour of the Commissioner, which upon his depositing a sum of Rs.5,00,000/- was cancelled by the



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Commissioner. It is the case of the petitioner that it is the respondents, who have requested him to also furnish a solvency certificate, which is denied by the respondents.

11.Be that as it may, taking into consideration the fact that the terms of the tender notice give an option to the bidder either to produce the solvency certificate or deposit a sum of Rs.5,00,000/-, in case he was unable to produce the solvency certificate, the request of the petitioner ought to have been favorably considered by the respondents. Therefore, in the light of the categorical terms of the e-auction notice, the Writ Petition is allowed. The amount shall be refunded back within a period of four weeks from the date of receipt of a copy of this order, failing which it shall earn interest at the rate of 15% per year. However, there shall be no order as to costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
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P.T.ASHA, J.

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