IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.S.RAMANATHAN**

Review Application Nos.30 & 31 of 2015
Rev.App.SR.Nos.38396 and 38399 of 2014
in C.R.P.Nos.3241 &4364 of 2010

B.Kamalakannan .. Petitioner in both the Rev.Appls.

versus

1.V.R.Nachiappan .. 1st Respondent in Rev.App. /2014
2.P.K.Kumaradevan .. 1st Respondent in Rev.App. /2014

3.Thondai Mandala Adi Saiva
Vellala Community's Sri Prasanna
Vinayagar Koil Trust,
Paraniputhur and rep.
By its Trustees
4.S.Dharmalinga Mudaliar
5.N.Jagadeesa Mudaliar
6.M.Karunakara Mudaliar
7.S.Arumugha Mudaliar
8.S.Vajjravelu Mudaliar ..Respondents 3 to 8 in both Rev.Appls.

PRAYER: Review Applications filed to review the common order dated 22.04.2013 made in C.R.P.Nos.3241 and 4364 of 2010 and thereby set aside the order of re-auction and restore the order dated 29.07.2010 passed by the Principal District Judge, Chengalpattu made in I.A.No.221 of 2006 in I.A.No.285 of 2004.

For petitioner : Mr.R.Subramanian,
for Mr.R.Bharath Kumar.

COMMON ORDER

It is submitted by the learned counsel for the Review petitioner that the learned Principal District Judge, Chengalpattu, after giving opportunities to the parties, passed an order in I.A.No.285/2005 in O.P.No.106/2003 fixing the upset price at Rs.18,00,000/- and the Advocate Commissioner also conducted auction after following all formalities. He further submitted that this Court also held that there is no evidence to come to the conclusion that the revision petitioners-V.R.Nachiappan and P.K.Kumaradevan were prevented from participating in the auction and from registering their offer. He also submitted that the petitioner also obtained the sale deed after depositing the sale consideration even in the year 2006 and that was utilised by the trust and they put up construction and they had the benefit of the money deposited by the petitioner, who is the auction purchaser. The petitioner also paid commission to the learned Advocate Commissioner, who conducted auction. These aspects were not properly appreciated by this Court while setting aside the auction on the basis of the offer made by one of the parties, who failed to bid the auction conducted by the auction purchaser. He therefore submitted that the order passed in the revision petitions have to be reviewed.

2. I am unable to accept the contention of the learned counsel appearing for the review petitioner. According to me, the submission of the learned counsel cannot be a ground for reviewing the order passed by me in the above revisions.

3. In paragraph 22 of the order, I have clearly stated that the amount deposited by the 6th respondent viz., the review petitioner shall be refunded to him and the 6th respondent/review petitioner was also entitled to get the refund of stamp duty paid by him for getting the sale deed in his favour and the revision petitioners were jointly directed to deposit the stamp duty and registration charges paid by the 6th respondent for getting the sale deed as a condition precedent for setting aside the auction sale within two months from the date of receipt of a copy of the order. Though it is submitted by the learned counsel for the petitioner that only one half of the registration charges and stamp duty was deposited and another half was not deposited, I have also made it clear in the said paragraph that the amount viz., the stamp duty and registration charges could be recovered from the

revision petitioners, as if, the decree was passed against them. Therefore, the grievance of the review petitioner that he has incurred expenses towards stamp duty and registration charges cannot be accepted.

4. However, having regard to the submission of the learned counsel for the review petitioner that the review petitioner lost interest and he deposited the amount even in the year 2006 and in 2013, the sale was set aside, in my view, review petitioners must be suitably compensated towards interest loss and also towards the expenses towards commission charges paid to the Advocate Commissioner, who conducted the auction.

5. According to me, this submission of the learned counsel in that regard appears to be genuine and that was considered by me while passing the above order while passing orders in the revision petitions. Hence, the learned Principal District Judge, Chengalpattu is directed to pay from out of the sale proceeds of the property, the commission charges paid by the review petitioner/auction purchaser to the Advocate Commissioner, who conducted the auction as per the order passed in I.A.No.285 of 2005 in Trust O.P.No.106 of 2003 and also pay interest, which was received by the trust from out of the

deposit made by the review petitioner from out of the sale consideration.

6. It is submitted by the learned counsel for the review petitioner that the learned Principal District Judge, Chengalpattu has not taken steps so far to auction the property.

7. The learned Principal District Judge, Chengalpattu is directed to comply with the order passed in the above revisions and take earnest steps to auction the property in public auction by fixing the upset price after ascertaining the market value of the property and this exercise shall be completed within two months from the date of receipt of the copy of the order.

8. With the above observation, the Review Petitions are partly allowed to the extent stated above.

04.03.2015

nvsri

R.S.RAMANATHAN, J.

nvsri

To

1.The Principal District Judge, Chengalpattu

Review Application Nos. 30 & 31 of 2015
in C.R.P.Nos.3241 &4364 of 2010
Rev.Appl.SR.Nos.38396 and 38399 of 2014

04.03.2015