

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-8-2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.10738 of 2013

- 1.R.Rangasamy (Died)
- 2.Tmt.Bakkiyalakshmi
- 3.Tmt.Geetha
- 4.R.Vinothkumar
- 5.R.Meena

... Petitioners

(P2 to P5 are substituted as LRS of the deceased R.Rangasamy as per Order dated 29.07.2015 passed in M.P.1 of 2014 and made herein)

Vs.

1. The Commissioner,
Dharapuram Municipality,
Dharapuram,
Tiruppur District.

2. V.K.Govindasamy

... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the cancellation order in Na.Ka.No.4749/2011/A3 dated 28.03.2013 and the re-auction cum Re-tender Notice in Na.Ka.No.4749/2011/A3 dated 28.03.2013 on the file of the Ist respondent, quash the same and consequently forbear the respondents from interfering with petitioner's right to sell flower and cucumber within the Bus-stand, Dharapuram during the license period between 01.04.2012 and 31.03.2015 by considering the representation dated 05.04.2013.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.A.S.Thambusamy for R1
Mr.N.Ponraj for R2

ORDER

The petitioners have come before this Court challenging the order dated 28.3.2013, terminating the licence to sell flower and cucumber in the bus-stand though vendors.

2. The first respondent auctioned the right to vend the flower and cucumber in the first respondent's bus-stand by virtue of auction-cum-tender notice dated 30.12.2011. The auction was conducted on 24.1.2012 and the petitioner was a successful bidder for a sum of Rs.4,03,000/-. By the resolution No.126 dated 27.02.2012, the auction was approved immediately within one week. The petitioners' right to vend flower and cucumber has been terminated by order dated 28.3.2013. The said order is being challenged before this Court.

3. Heard the learned counsel appearing for the petitioners, Mr.A.S.Thambusamy, learned counsel appearing for first respondent and Mr.N.Ponraj, learned counsel appearing for the second respondent.

4. It is an admitted fact that the petitioners were successful bidders for a sum of Rs.4,03,000/- to vend flowers and cucumber in the bus-stand for the period from 01.04.2012 to 31.03.2013. The auction was also approved by virtue of resolution dated 27.02.2012. However, the petitioners did not pay the auction amount within the one week from the date of granting licence namely, 26.3.2012. The petitioners only paid a sum of Rs.55,000/- through DD dated 16.2.2003 and Rs.1,00,000/- on the very same day through demand draft. It is stated that subsequently the petitioners paid a sum of Rs.50,000/- and Rs.70,000/- on 4.4.2012 and 26.4.2013 respectively.

5. Though the petitioners were granted licence, the petitioners were not allowed to do their business and the second respondent alone was allowed to do his business and therefore, the termination order is unwarranted. Even if the termination order is appropriate, the amount paid by the petitioners cannot be retained by the first respondent. On the other hand, Mr.Thambusamy, learned counsel appearing for the first respondent would submit that once the petitioners were declared as successful bidders, they should have paid the amount within one week time. Since, there was a failure, the licence was terminated and reaction was scheduled to be conducted. However, the petitioners obtained an interim order from this Court and therefore, the auction should not be conducted.

6. From the above, it is evident that the petitioners paid a sum of Rs.55,000/-; Rs.1,00,000/-; Rs.50,000/-; and Rs.70,000/-, totalling a sum of Rs.2,75,000/- was paid.

7. As rightly pointed out by the learned counsel appearing for the first respondent, the tender amount was not paid within time. Hence, there was a violation of tender condition by the petitioners. However, it may not be a ground for the first respondent to keep the amount paid by the petitioners. If the first respondent decided to re-auction, he should have paid back the money after deducting the expenses, which are incurred for re-auction. Without doing so, the entire amount of Rs.2,75,000/- seems to have been withheld by the first respondent and the withholding of the said amount is unreasonable. There is no provision in the tender notice for withholding forfeiting the money.

8. Since re-auction was proposed only by publication, the first respondent is directed to deduct a sum of Rs.10,000/- from the amount paid by the petitioners and the balance amount is directed to be paid within two weeks from the date of the receipt of a copy of the order.

9. With the above, the writ petition is disposed of. No costs. Consequently, the connected M.P.Nos.1,2,3 and 4 of 2013 are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner,
Dharapuram Municipality,
Dharapuram,
Tiruppur District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.45039
+1cc to Mr.A.S.Thambusamy, Advocate, S.R.No.44922

W.P.No.10738 of 2013

VD(CO)
CA(08/09/2015)