

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.12.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.8571 of 2015
& M.P.Nos. 1 to 3 2015

P.Poochamy

... Petitioner

Vs.

1.The District Collector,
Tiruppur District,
Tiruppur.

2.The Executive Officer,
Muthur Town Panchayat,
Tiruppur District.

3.The President,
Town Panchayat,
Muthur,
Tiruppur District.

.... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records relating to the fourth Auction/Tender Notice, dated 17.03.2015, made in Na.Ka.No.156/2013, issued by the second respondent, published in Thina Thanthi daily newspaper dated 20.03.2015, quash the same and consequently direct the respondents 1 and 2 to grant lease order in the name of the petitioner in the light of the highest bid quoted by him in the third Auction/Tender Notice, dated 06.03.2015, made in Na.Ka.No.156/2013, held on 17.03.2015.

For petitioner ... Mr.N.Manokaran

For Respondents .. Mr.R.Rajeswaran Spl.G.P., for R1

M/s.P.Rajalakshmi Spl G.P., for R2

M/s.K.Govi Ganesan for R3

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the Auction cum Tender Notice dated 17.03.2015, issued by the second respondent and to direct the respondents 1 and 2 to grant lease in favour of the petitioner by considering his bid offered pursuant to the tender conducted vide Notification, dated 16.03.2015.

2. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner, Mr.R.Rajeswaran, learned Special Government Pleader appearing for the first respondent, Mr.P.Rajalakshmi, learned Special Government Pleader appearing for the second respondent and Mr.K.Govi Ganesan learned counsel appearing for the third respondent.

3. The second respondent issued tender notification, dated 06.02.2015, for grant of licence to collect toll in the weekly market at Muthur Town Panchayat. There were no bidders for the said auction and therefore, re-auction was notified on 23.02.2015. As there were no bidders even in the re-auction, a third auction notice was issued on 06.03.2015. The petitioner participated in the same and he deposited the earnest money of Rs.1,50,000/-, apart from paying the charges for the tender schedule. The petitioner quoted Rs.21,10,000/-, by his bid dated 17.03.2015 and he is stated to be one among the 15 tenderers, who participated in the auction held on 17.03.2015. It is submitted that the bid amount offered by the petitioner is the highest and that he was declared as successful bidder. The petitioner states that he was called upon to deposit the proportionate lease amount which was deposited by the petitioner on the same date. The petitioner's case is that inspite of the petitioner having complied with all these formalities, the second respondent issued the fourth tender notification on 17.03.2015, which is impugned in this Writ Petition.

4. The learned counsel appearing for the petitioner submitted that the impugned tender notice is arbitrary and illegal especially when the petitioner's bid was accepted as highest bid. It is further submitted that the impugned action notice itself has been issued with malafide intention, so as to somehow deny the benefit of the tender to the petitioner. The learned counsel for the petitioner referred to the documents filed in the typed set of papers to establish that the third auction notice in which the petitioner participated, was given wide publicity. The petitioner also produced the copy of the payment receipt of Rs.5,27,500/-, paid by the petitioner on 17.03.2015, apart from Rs.1,50,000/- paid on 16.03.2015, as Security Deposit. The learned counsel further submitted that since no further action was taken, the petitioner submitted representations and thereafter, only approached this Court by way of this Writ Petition.

5. At the time when the Writ Petition was entertained, this Court by order dated 25.03.2015, granted an order of interim stay.

6. The learned counsel for the petitioner submitted that without confirming the tender in favour of the petitioner, the second respondent themselves are collecting the toll charges and from the reply received under the Right to Information Act, dated 28.05.2015, it is seen that the second respondent Town Panchayat is losing revenue because the collection is not to the optimum level. The learned counsel would further submit that the respondents are estopped from refusing to grant licence in his favour especially when by their own conduct, they have accepted the payments from the petitioner. To support such contention, the learned counsel relied on the decision of the Hon'ble Supreme Court in the case of the Union of India vs. Godfrey Philips India Ltd., reported in (1985) 4 SCC 369. Further, it is submitted that without informing the petitioner as to the reasons for not accepting the bid, the respondent could not have called for the fourth tender and to support such contention reliance has been placed on the decision of the Hon'ble Supreme Court in the case of State of Punjab vs. M/s.Bandeep Singh & Ors., reported in 2015 (9) SCALE 240.

7. The learned counsel appearing for the second respondent by relying upon the counter affidavit submitted that the tender conditions clearly stipulate that the Town Panchayat has right to either accept or reject a tender and even in respect of highest bid only after the Panchayat Union Council approves the same in its council meeting and an order is passed by the Executive Officer, amount can be remitted. In this regard, the learned counsel has drawn the attention of the Court to condition Nos.11 and 12, of the tender conditions in the notification dated 06.02.2015. The other allegations of malafide exercise of power has been denied in the counter affidavit.

8. The learned counsel for the third respondent submitted that the third respondent has been unnecessarily arrayed as a respondent in the Writ Petition and all allegations made against the third respondent are absolutely false. It is submitted that in the third auction 14 persons participated, but among them, the petitioner alone offered the bid amount and the reasons for other persons not bidding in the auction is well within the knowledge of the petitioner. When the bid quoted by the petitioner was placed before the Council, it was discussed at length and the Council resolved to conduct fresh auction as the Town Panchayat is fast developing and the patronage to the weekly standi was also increasing and the Town Panchayat would be able to augment its revenue to carry out other developmental works such as laying of roads providing water supply etc. It is further submitted that the fourth tender was called for was fixed on 27.03.2015, and wide publicity was given in Tamil daily on 20.03.2015. However, the petitioner instead of participating in the same, has filed this Writ Petition and obtained a stay. Further, it is submitted that intention of the Town Panchayat is to augment its revenue and nothing more. Further, the Town Panchayat is finding it

difficult to depute staff to collect the toll from the market as there is shortage of manpower.

9. Heard the learned counsels appearing for the parties and perused the materials placed on record.

10. The specific case of the respondent is that in the third auction which was conducted, though 14 persons participated except the petitioner, none had offered a bid. The third respondent states that the reason for other persons not submitting their bids, though they came for the auction is within the knowledge of the petitioner.

11. Be that as it may, the issue which has to be considered in the instant case is as to whether any right has accrued in favour of the petitioner on account of participating in the auction. To decide this question, we have to examine the terms and conditions on which the tenders were invited. Condition No.11 of the notification, states that it is well within the jurisdiction of the respondent Town Panchayat to accept or reject an offer made in an auction and even in respect of an offer, which has been made, it is the subject to confirmation by the Panchayat council for the Town Panchayat and thereafter, the Executive Officer has to issue proceedings based on the council's decision. Further, Clause 12, also empowers respondent Town Panchayat to call for re-auction. Admittedly, no order has been issued in favour of the petitioner confirming the tender in his favour. In such circumstances, it is not known as to how the petitioner had remitted a sum of Rs.5,27,500/- when the specific stand of the respondents 2 & 3 is that unless the council approves and an order is issued no right accrues in favour of the tenderer. That apart, the petitioner has not been able to produce any documents to show that there was an order of confirmation passed in his favour. In such circumstances, there can be no question of promissory estoppel on the part of the respondents as there was no definite assurance given to the petitioner that he is the successful tenderer and work will be allotted in his favour. Therefore, the decisions relied on by the learned counsel for the petitioner does not in any manner advance the case of the petitioner. The purpose for which auction cum tender is conducted in such matters is to ensure that the local body secures the maximum revenue. Therefore, that alone shall be the guiding principle more particularly when there was no specific order of confirmation passed in favour of the petitioner for him to contend that the licence has to be granted in his favour.

12. For all the above reasons, the petitioner has not made out any case for interference and accordingly, the Writ Petition is dismissed with the direction to the respondents 2 and 3 to call for a

fresh tender in which the petitioner will be entitled to participate.
No costs. Consequently, connected Miscellaneous Petitions are closed.

pbn

Sd/-

The Assistant Registrar(IV)

/True Copy/

The Sub Assistant Registrar

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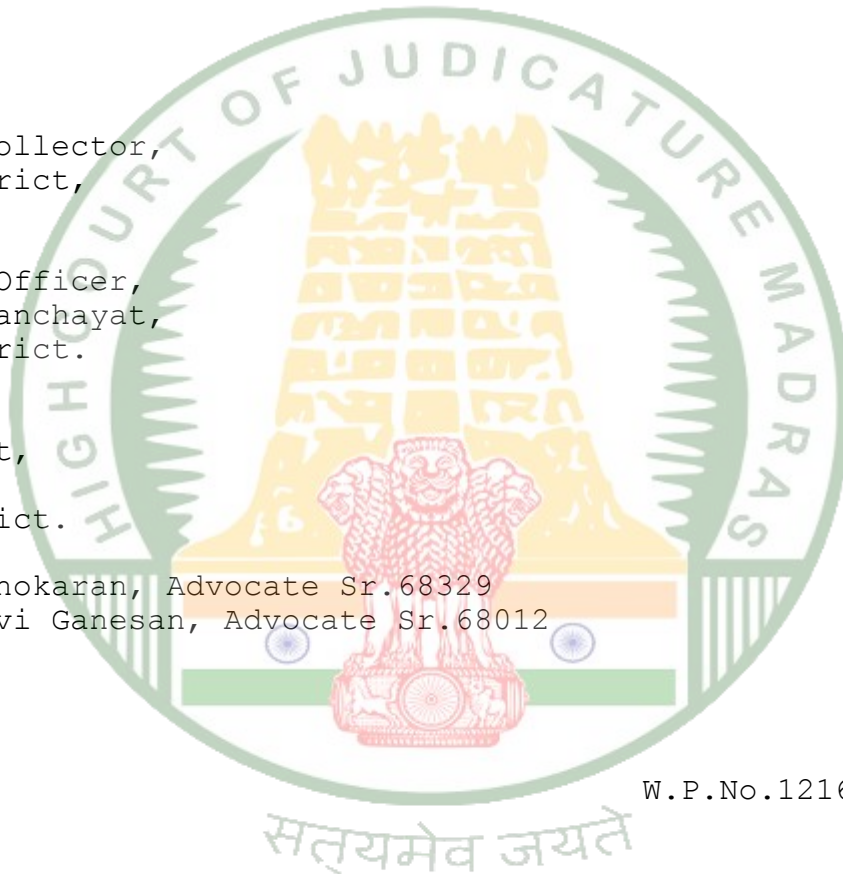
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+1 CC to Mr.N.Manokaran, Advocate Sr.68329

+1 CC to Mr.K.Govi Ganesan, Advocate Sr.68012



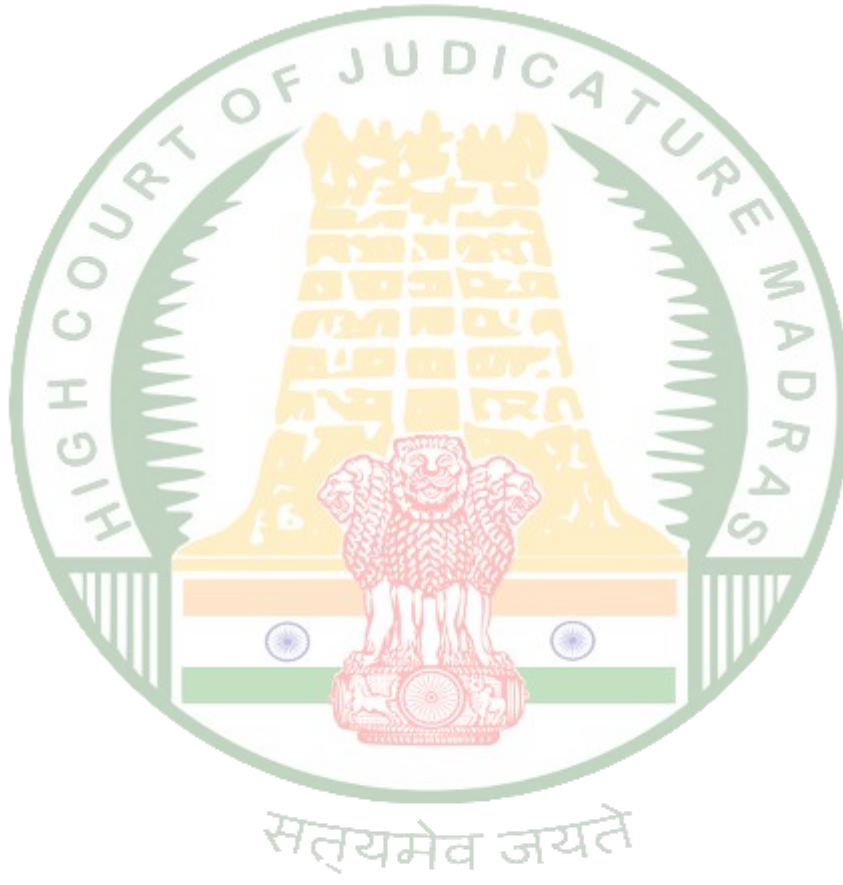
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