



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2015

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal(MD) No.1224 of 2015
and
M.P(MD)No.1 of 2015

B.Venkatesh Babu

... Appellant

Vs.

1.The Commissioner,
Department of Hindu Religious and
Charitable Endowments,
119, Nungambakkam,
Chennai 600 034.

2.The Joint Commissioner,
Department of Hindu Religious and
Charitable Endowments,
Sivagangai,
Sivagangai District.

3.The Fit Person/Executive Officer,
Arulmighu Subramania Swamy Thirukoil,
Kamuthi Village and Taluk,
Ramanathapuram District.

4.K.Muniasamy

5.V.Kottaichamy

6.R.Aayar raman

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 30.09.2015 made in W.P.(MD)No.8622 of 2014.

Prayer in WP(MD). 8622/ 2014 :

Writ Petition filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the 1st Respondent made in Na.Ka.No. 7169/V3/dated 18.03.2014 cancelling the declaration declaring the petitioner as a successful bidder in respect of the payment of donation relating to the lease of the shop to an extent of 2668 sq.feet belonging to the Arulmighu Subramania Swamy Thirukoil, Kamuthi Village and Taluk by the then Fit Person of the Thirukoil and quash the same and issue a suitable direction, directing the 1st Respondent to confirm the auction held on 24.12.2013 in declaring petitioner as a successful bidder in respect of subject aforesaid and render justice.



For Appellant : Mr.AR.L.Sundaresan,
Senior Counsel for J.Anandkumar

For Respondents 1&2 : Mr.V.R.Shanmuganathan,
Special Government Pleader.

For Respondents 3 : Mr.S.Manohar

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JUDGMENT

(Judgment of the Court was delivered by **V.RAMASUBRAMANIAN, J**)

The appellant whose writ petition challenging the cancellation of an auction was dismissed by the learned Judge has come up with the above writ appeal.

2.Heard Mr.AR.L.Sundaresan, learned Senior Counsel for the appellant. Mr.V.R.Shanmuganathan, learned Special Government Pleader takes notice for the respondents 1 and 2. Mr.S.Manohar, learned counsel takes notice for the respondents 3 and 4.

3.The third respondent invited a tender in a sealed cover for leasing out a shop measuring an extent of about 2668 sq.ft. in S.No.606/35, Maravar Sanga Savadi Street, Kamuthi Town, Ramanathapuram. Though the rent for the building was fixed, the auction was only for inviting persons to make donations to the temple. As per the terms and conditions, a person who offered highest donation, was to be given the lease.

4.Four persons including the appellant and the respondents 4 to 6 participated in the auction. The appellant became the highest bidder. But on a complaint lodged by a third party who did not participate in the auction, the tender was cancelled. Challenging the cancellation of tender, the appellant filed a writ petition in W.P(MD)No.8622 of 2014. The same was dismissed by the learned Judge by an order dated 30.09.2015. Challenging the same the appellant is before us.

5.There are two reasons stated for the cancellation of the tender. The first was that the sixth respondent herein was a person set up by the appellant and the demand draft for Rs.25,000/- payable by the participants was taken on behalf of the sixth respondent by the appellant himself. The second reason stated in the order of cancellation was that a clear 15 days notice was not available from the date of publication of the notice to the date of auction. Both grounds were accepted by the learned Judge.

6.According to Mr.AR.L.Sundaresan, learned Senior Counsel for the appellant, the first ground is unsustainable inasmuch as there was no proof to show that the earnest money deposit paid by the sixth respondent was sponsored by the appellant. But this contention cannot be accepted. A clear finding is recorded that the demand draft for Rs.25000/- submitted by the sixth respondent was taken by the appellant. Moreover, the then Executive Officer who floated the tender has been placed under suspension and charges have been framed for the very same irregularity. Therefore, the learned Judge was right in upholding the first reason for cancellation of the tender.



7. Insofar as the second reason is concerned, it is contended by Mr. AR. L. Sundaresan, learned Senior Counsel for the appellant that what is prescribed by Rule 4(1) of the Religious Institutions (Lease of Immovable Property) Rules, 1963 is a clear 15 days notice between the date of publication and the date of auction. But different modes of publication are prescribed in sub rule (1) of Rule 4 and the publication in a newspaper is stipulated only in sub rule (2). While the stipulation with regard to 15 days clear notice is found only in sub rule (1), the same is not found in sub rule (2). Therefore, learned Senior Counsel contended that the telescoping of the 15 days clear notice found in sub rule (2) into sub rule (1) is not called for.

8. Though technically what the learned Senior Counsel contends is correct, we have to look into the object and purpose. Today, any tender and every tender floated by every public authority is called in question. If the age old practice of beat of tom tom and publication in the notice board of the office of the very institution are found to be sufficient, the allegations that there was no proper publication usually come up. But such an allegation cannot be made in respect of publication in a newspaper. Moreover, the object of wide publicity is to invite a higher rate for the temple. Hence, we are of the clear view that the rejection of the tender was justified. After all, the appellant will have one more opportunity to participate if we uphold the cancellation of tender. Therefore, the writ appeal is dismissed. No costs. Consequently, M.P(MD) No.1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

sms

To

1. The Commissioner, Department of Hindu Religious and Charitable Endowments, 119, Nungambakkam, Chennai 600 034.

2. The Joint Commissioner, Department of Hindu Religious and Charitable Endowments, Sivagangai, Sivagangai District.

+1CC to Mr. J. Manohar Advocate Sr.No. 70898

+1CC to Mr. J. Anandkumar Advocate Sr.No. 70561

+1CC to Spl. Government Pleader Sr.No. 70746

GJM/AAL/MPA/22.12.2015-3P-6C

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and

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