



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:15.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P. (MD)Nos.10342 to 10344 of 2014
and

M.P (MD)Nos.1 & 2 of 2014 (In All W.Ps)

Eliyas

... Petitioner

Vs.

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Municipality Commissioner,
Kuzhithurai Municipality,
Kuzhithurai Post,
Kanyakumari District.

... Respondents

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the impugned orders passed by the second respondent in Na.Ka.No.94/2011/A2, dated 06.05.2014 in respect of Shop No.8 in "A" Block, Shop No.14 in "B" Block and Shop No.7 in "A" Block of Marthandam New Bus Stand and quash the same as illegal and consequently directing the second respondent to repay the security amount of Rs.2,55,000/- (Rupees Two Lakhs and Fifty Five Thousand Only) deposited by the petitioner towards the second respondent on 26.02.2014 with interest to the petitioner within the time stipulated by this Court.

(In All Three W.Ps)

For Petitioner : Mr.G.Radhakrishnan

For R-1 : Mr.M.Murugan,
Government Advocate

For R-2 : Mr.Vamanan

COMMON ORDER

All these three Writ Petitions are filed by one and the same person. He is aggrieved against the order passed by the second respondent Municipality, dated 06.05.2014 calling upon the petitioner to deposit twelve months rental amount with service tax within 24 hours and also to execute an affidavit as contemplated under the tender conditions. In the very same impugned order, the Municipality informed the petitioner that if he commits default, confirmation of auction will be cancelled and action will be taken for conducting re-auction of the three shops.



2. Heard the learned counsel appearing for the petitioner, the learned Government Advocate appearing for the first respondent and the learned counsel appearing for the second respondent.

3. The petitioner was the successful bidder in respect of three shops namely Shop Nos.7, 8 and 14. As per the tender conditions, the successful bidder has to deposit 12 months rental amount within seven days from the date of receipt of confirmation order. It is seen that in this case, though auction was conducted on 27.03.2013, construction of the shops were completed only in the month of February, 2014 and a notice was served on the petitioner on 14.02.2014 informing that the shops are ready to occupy. It is further stated in the said notice that the petitioner has to deposit the first year rental amount with other taxes and also to execute the agreement as per the tender conditions. Even though the said notice was acknowledged by the petitioner's son, the petitioner did not deposit the one year rental amount as per Clause 11(a) of the tender conditions. Therefore, the present impugned notice was issued on 06.05.2014.

4. When this matter was taken up for hearing on 01.07.2014, this Court granted an interim stay of the impugned order subject to the condition that the petitioner shall pay 50% of the arrears on or before 03.07.2014 by further observing that if the amount is not paid on or before that date, the respondents are at liberty to proceed with the auction.

5. Today all the three Writ Petitions are taken up for final disposal. In the counter affidavit filed by the respondent Municipality, it is stated that the petitioner did not comply with the order passed by this Court on 01.07.2014 and consequently, fresh auction was conducted on 04.07.2014.

6. In this case the fact remains that the petitioner, even though the successful bidder, has not complied with the terms of the conditions of the tender namely Clause 11(a) wherein and whereby he is bound to deposit one year rental amount within seven days from the date of receipt of notice from the respondent Municipality. Admittedly, the petitioner has not deposited the amount.

7. The learned counsel appearing for the petitioner submits that when the security deposit made by the petitioner is lying with the respondent Municipality, they cannot call upon the petitioner to deposit one year rental amount.

8. Perusal of the tender conditions would show that under Clause 8, a person, who participates in the tender process, has to furnish a security deposit. However, under Clause 11(a), it is contemplated that a person in whose favour the auction is confirmed, has to deposit one year rental amount within seven days from the date of receipt of confirmation order. Therefore, The petitioner has to necessarily comply with the condition contemplated under Clause 11(a) or at least should have made a request to the respondent Municipality for adjusting the security deposit already made by the petitioner. It has not been done in this case. On the other hand, Clause 11(e) of the tender conditions contemplates that Municipality is at liberty to make good the loss from the security deposit made by the tenderer, if he fails to comply with the tender conditions.

9. In any event, when this Court has shown some indulgence and granted an interim order of stay by directing the petitioner to pay 50% of the arrears on or before 03.07.2014, the petitioner has not complied with such condition and consequently, the respondent Municipality has gone for re-auction on 04.07.2014 itself.

10. Therefore, I find that nothing survives in these Writ Petitions to be adjudicated upon further as the petitioner has not only deposited the one year rental amount as per the tender conditions and also failed to comply with the conditional order passed by this Court on 01.07.2014. Therefore, such person is not entitled to have any further indulgence from this Court. Accordingly, all these Writ Petitions are dismissed as devoid of merits. If the petitioner has got any claim with regard to security deposit amount, it is open to the petitioner to work out his remedy before the competent civil Court, if he has a case on merits. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

To

1.The District Collector,
Kanyakumari District,
Nagercoil.

2.The Municipality Commissioner,
Kuzhithurai Municipality,
Kuzhithurai Post,
Kanyakumari District.

+3cc to M/S.K.Vamanan, Advocate in SR.No. 72544

+1cc to M/S.G.Radhakrishnan, Advocate in SR.No. 71680

+1cc to Special Government Pleader in SR.No. 71958.

TS/31.12.2015/3P-8C/AAL-MPA

W.P. (MD) Nos.10342 to 10344 of 2014

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