

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.2854 OF 2004

ORDER

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The case of the petitioner is that the 1st respondent issued auction notification for the sale of Ac.1.24 cents in Sy.No.361/1B situated at Anaparthi Village and Mandal, East Godavari District belonging to the 4th respondent. In pursuance of the same, the auction was held on 11.11.2002. The petitioner participated in the said auction by depositing an amount of Rs.25,000/- and as the petitioner emerged as highest bidder, he immediately deposited 1/3rd of the bid amount i.e., Rs.3,09,000/- which was received by the 4th respondent. Thereafter, the 1st respondent issued proceedings dated 10.02.2003 confirming the auction held on 11.11.2002 which clearly shows that petitioner became the highest bidder. Further on 17.09.2003, the 1st respondent issued another proceedings to the 4th respondent stating that registration will be done in the name of the highest bidder. Contrary to the proceedings dated 17.09.2003, the 1st respondent issued proceedings dated 13.10.2003 stating that the registration may be kept in abeyance till the dispute is settled. In pursuance to the same, the petitioner filed detailed representation on 06.11.2003 to the 1st respondent. Later, the 1st respondent issued proceedings dated 17.11.2003 calling upon the petitioner to appear before him on 24.11.2003 and accordingly when the petitioner appeared, the 1st respondent recorded the sworn statement of the petitioner. Thereafter the petitioner was called upon to pay interest upto 31.03.2004 and as per the proceedings of the official respondents, the petitioner has already paid an amount of Rs.30,000/- plus Rs.3,300/- and Rs.9,990/-. In spite of the same, the 1st respondent issued impugned proceedings dated 20.12.2003 cancelling the proceedings dated 10.11.2011 and directing the 4th respondent-temple

to conduct re-auction duly giving an opportunity to the petitioner, 5th respondent and another person. Aggrieved by the same, the present writ petition is filed.

Counter affidavit is filed by the 1st and 3rd respondents admitting about the issuance of auction notification for sale of the land admeasuring Ac.1.24 cents in Sy.No.361/1B belonging to the 4th respondent and conducting auction on 11.11.2002. It is also admitted that the petitioner became the highest bidder by knocking down the bid for Rs.10,00,000/- and deposited an amount of Rs.25,000/- as EMD and Rs.3,09,000/- in all Rs.3,34,000/- towards 1/3rd of the bid amount. The fact of confirmation of auction by the Commissioner was also admitted. It is also stated that the 5th respondent claiming to be the Managing Partner of Sri Laxminarayana Builders submitted an application stating that the petitioner has participated in the auction on behalf of the said firm and therefore, the sale deed may be executed in favour of the said firm. Further, it is stated that the petitioner himself gave an application dated 01.06.2003 attested by notary for registration of sale in the name of 5th respondent. The petitioner also submitted a representation dated 06.11.2003 stating that he will be paying the bid amount by 31.03.2004 and that the sale deed may be executed in his favour ignoring the claim of the 5th respondent. In view of rival claim, the Commissioner of Endowments by letter dated 13.10.2003 instructed the Manager to collect the remaining 2/3rd amounts along with interest from the highest bidder and keep the registration pending till the dispute is settled. It is further stated that petitioner appeared before the Joint Commissioner on 24.11.2003 and gave statement claiming registration in the name of Sri Laxminarayana Builders represented by him as the Managing partner of the said firm and also stated that the 5th respondent is not partner of the firm. In the counter it is stated that the department never demanded the petitioner to pay interest and the petitioner himself paid

interest voluntarily and sought extension of time from the Commissioner by letter dated 06.11.2003 to get the sale deed executed. The respondents further state that since the petitioner failed to deposit remaining 2/3rd amount within 15 days after the bid is confirmed in his favour as per condition No.6 of the auction publication, the auction was cancelled as per condition No.5 of the auction and sought for dismissal for the writ petition.

The 4th respondent also filed counter reiterating the averments in the counter filed by the 1st and 3rd respondents. It is stated that the Manager of the 4th respondent-temple informed the highest bidder by its letter dated 03.04.2003 requesting him to pay the balance sale consideration of Rs.6,66,000/- within fifteen days and obtain registered sale deed with his expenses and the highest bidder also made an endorsement of the same. It is also stated that the 5th respondent made a claim before the Manager that the land should be registered in his name after receiving the consideration stating that the petitioner got purchased the said property on his behalf. It is further stated that the 5th respondent was not one of the bidders and made no deposit, as such his claim cannot be accepted. Further, it is stated that the Manager of the 4th respondent temple received the interest amount from the highest bidder before receipt of the impugned proceedings.

Additional counter affidavit is filed reiterating the averments in the counters filed by respondents 1, 3 and 4.

Heard the learned counsel for the petitioner, learned Government Pleader for respondents 1 to 3, Smt K.Lalitha, learned Standing counsel for the 4th respondent and Sri N.Siva Reddy, learned counsel for respondent No.5.

It is to be seen that admittedly, the petitioner participated in the auction conducted by the 1st respondent in respect of land admeasuring Ac.1.24 cents in Sy.No.361/1B belonging to the 4th respondent temple.

The dispute is whether the petitioner participated in his individual capacity or on behalf of the Sri Laxminarayana Builders (firm). It is not clear from the confirmation proceedings dated 10.02.2003 issued by the 1st respondent as to who is the highest bidder as the name of the petitioner as well as Sri Laxminarayana Builders, Anaparthi appear in the said proceedings. As per condition No.6 of the auction, the highest bidder has to pay the balance of 2/3rd amount within a period of 15 days from the date of approval orders of the Commissioner, Endowments Department, otherwise the 1/3rd amount will be forfeited along with the EMD and fresh auction will be conducted. Admittedly the amount was not paid within 15 days. After auction is confirmed by the 1st respondent, the petitioner and the 5th respondent made representations claiming that they are entitled for property and the same should be registered in their names. In those circumstances, a report was sent to the 1st respondent. Basing on the report, the impugned proceedings were issued cancelling the auction proceedings held on 11.11.2002. The case of the petitioner is that he was not informed about payment of the balance amount. The petitioner himself knowingly fully aware of the auction conditions participated in the auction process is bound to pay the amount. But he has not paid the amounts within the stipulated time and he himself filed an application on 06.11.2003 seeking extension of time till 31.03.2004 which goes to show that he was aware of the auction conditions. In the counter it is specifically stated that the petitioner made an application dated 01.06.2003 attested by notary stating that he has participated in the auction on behalf of the Sri Laxminarayana Builders as a Manager and the 5th respondent is the Managing Partner and the property can be registered in the name of the 5th respondent. He stated the same before the 1st respondent when he was issued notice and the same was not denied in the reply affidavit filed by the petitioner. The petitioner is coming up with different

versions. In the counter it is stated that in view of the dispute and in view of the non payment of the amounts within the stipulated time as specified in the auction conditions, the auction has been cancelled. As such, the same cannot be found fault with. In the reply affidavit, petitioner states that compromise has been entered between the petitioner and the 5th respondent which is filed today but the same is disputed by the counsel for the 5th respondent. This shows the conduct of the petitioner. These are all disputed questions of fact. More so, admittedly, the amount is not paid within 15 days as per the auction conditions, as such it cannot be said that the impugned order is illegal and erroneous. The petitioner in the writ affidavit states that he has participated in the auction in his personal capacity, but whereas in the counter it is stated that a notarised application was made by the petitioner stating that he is the Manager of Sri Laxminarayana Builders. Obviously, a false statement is made in the writ affidavit and hence even on that ground, the writ petition is liable to be dismissed.

Since the grant of relief under Article 226 of Constitution of India is discretionary and equitable, conduct of the parties who approach this Court is to be seen before grant of any relief.

In view of the above facts and circumstances, I do not see any merit in the writ petition and accordingly, the writ petition is dismissed with exemplary costs of Rs.10,000/-. However, it is open for the 4th respondent to issue fresh auction notification. Since it is stated that the amounts are lying with the department, the parties are at liberty to approach the respondent authorities with an application for refund and the same shall be considered in accordance with law. There shall be no order as to costs.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER

REDDY,J

Date: 30.09.2015
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