

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.9.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH  
AND  
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.A.No.1086 of 2016  
and  
C.M.P.Nos.14109 & 14110 of 2016

M.Vasanthi

Appellant

Versus

1. The Ministry of Defence,  
rep. by Rep. by its Secretary  
104 South Block  
Government of India,  
New Delhi-110 011.

2 The Chief Executive Officer  
Cantonment Board  
St. Thomas Mount Chennai.

Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 8.8.2016 passed in W.P.No.27571 of 2016 on the file of this court. Petition under Article 226 of the constitution of India praying for issue of a writ of certiorarified Mandamus call for the records of the 2nd respondent in Tender Notice dated 28.07.2016 with No.STM/REV/IV/2257 published in Dinakaran dated 29.07.2016 and quash the same and direct the respondent to fix the EMD amount after obtaining concurrence of the 1st respondent

For appellant : Mr.AR.L.Sundaresan, Senior Counsel for  
Mrs.A.L.Ganthimathi

For R2 : Mr.C.Mohan for  
M/s.King and Partridge

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties.

2. This appeal is filed as against the order of the learned Single Judge dismissing the writ petition filed by the appellant.

3. The writ petition had been filed by the appellant/writ petitioner being a licensee for collecting itinerant vendor fee and parking fee for the vehicles parked in the open market in Pallavaram. It appears that initially she was granted such licence for a period of two years which came to an end by 2014, but, however, it was extended by another two years viz., till 2014. Thereafter, it appears that she had approached the civil court and obtained some orders. However, tender was called for. Therefore, expressing some grievance, the writ petitioner had filed the writ petition before the learned Single Judge.

4. It appears that new tenders were called for by the respondents with higher amount taking into consideration the volume of profit earned by the contractor and also keeping into consideration the income that could be fetched for the Cantonment. It also appears that the successful bidder was already offered the contract and the learned Single Judge also found that a suit was also filed and it is pending consideration. Looking into the matter of maintainability of the suit, the learned Single Judge has dismissed the suit.

5. According to the learned Senior Counsel appearing for the appellant, the order of the learned Single Judge dismissing the suit is totally unwarranted as there is no notice issued. Further, it is submitted that when he approached the respondent-authority for tender application, he was denied of the same.

6. When the writ appeal came up on 1.9.2016, the impugned order was stayed until further orders. When the matter is taken up today, learned counsel appearing for the second respondent would submit that the tender in question is one for collecting itinerant vendor's fee and parking fee for the vehicles parked at the open market area in Pallavaram, which was initially granted for a period of two years on expiry of such period, at the request of the petitioner, some more time was granted. Thereafter, on realising that there would be a tender every year as is being done, keeping the income that would accrue, a decision was taken to call for tenders and the highest bidder was given the contract and the same was accepted and everything was concluded and only at this stage, the petitioner came up with the writ petition to stall the entire proceedings which was already completed.

7. In the circumstances, we are not inclined to keep the matter in abeyance by continuing the interim order granted in this appeal. What is not in dispute is that the petitioner has filed a civil suit and some order has been passed therein against the Cantonment Board/respondent. Be that as it may, now a tender had been called for and the highest bidder was offered

the contract which was also accepted and the same had been brought to the notice of the learned Single Judge and therefore, the learned Single Judge also rejected the request to stall the proceedings which had already been concluded, against which the petitioner has approached this court in writ appeal.

8. A submission was made at this stage that when it was brought to the notice of the learned Single Judge that a civil suit is also filed, the learned Single Judge ought not to have proceeded to dismiss the suit filed by the petitioner. It is a different aspect to be considered. The learned Single Judge, while dismissing the petition filed by the petitioner, found that already the very process is completed and the question of interference and at that stage would not arise and also found that there would not be any irregularity or illegality in the action being taken by the respondent in calling fresh tenders to fetch a higher income for the Cantonment Board. Further, the fact remains that there was no impediment to the appellant to participate in the tender process by filing application. Of course, it is contended that when she approached for the tender form, she was denied of the same. But, it appears that no such allegation was raised in this regard before the learned Single Judge.

9. Anyhow, the petitioner has missed the train because of the inaction on his part in participating the tender process knowing fully well that a tender would be called every year as the Cantonment Board, being a statutory authority, is bound by their rules and regulations. In the circumstances, we are of the view that the appeal is bereft of merit and the same deserves to be dismissed. However, it is left to the petitioner to seek further clarification before the learned Single Judge with regard to the order passed to quash the proceedings pending before the civil court without there being a notice. It is made clear that forthwith the appellant shall not proceed to collect any amount since fresh tender had been called for and the highest bidder had been offered the contract which is also shown to have been accepted by the licensee. If there is any revenue loss, as contended by the second respondent, that could be worked out separately elsewhere. With the above clarification, the writ appeal is dismissed. No costs. The connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssk.

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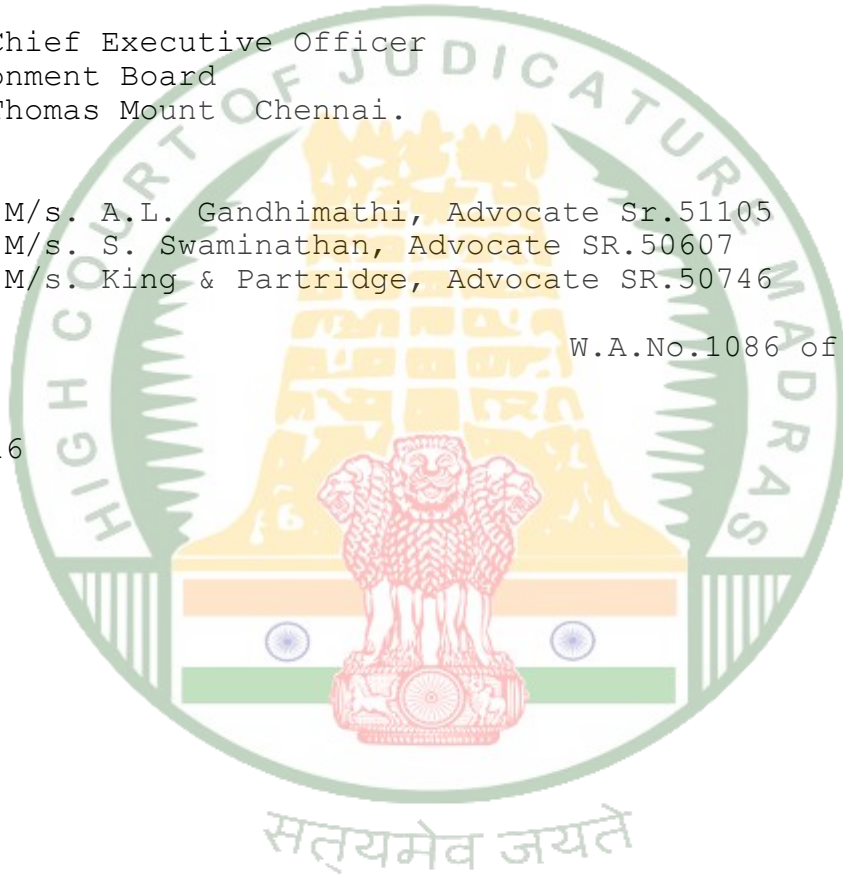
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+ 1 cc to M/s. A.L. Gandhimathi, Advocate Sr.51105  
+ 1 cc to M/s. S. Swaminathan, Advocate SR.50607  
+ 1 cc to M/s. King & Partridge, Advocate SR.50746

W.A.No.1086 of 2016

SSK(CO)  
Eu 30.09.16



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