

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2016

Coram

The Honourable Mr.Justice HULUVADI G.RAMESH
and
The Honourable Mr.Justice V.PARTHIBAN

W.A. No.1119 of 2016 and
CMP No.14449 & 14450 of 2016

T.Bhoopathy

.. Appellant

Vs.

1. The Commissioner,
Municipal Administration &
Water Works Department,
Ezhilagam,
Chennai-600 005.

2. The Commissioner,
Palladam Municipality,
Palladam.

...Respondents

Writ Appeal is filed under Clause 15 of the Letters Patent, seeking to set aside the order dated 09.08.2016 in W.P.No.26793 of 2016 passed by the learned single Judge of this Court. Petition under Article 226 of the constitution of India praying for issue of a writ of Mandamus directing the 2nd respondent to hand over shop No.2 facing eastern side at Palladam Bus Stand to the petitioner on the basis of the petitioner representation dated 20.07.2016.

For Appellant

: Mr. M.Gnanasekar

For Respondent

: Mr.P.S.Sivashanmugasundaram

Spl.G.P. for R1

Mr.A.S.Thambusamy for R2

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

This Writ Appeal has been directed against the order of the learned single Judge, dated 09.08.2016 in W.P.No.26793 of 2016 in and by which, while dismissing the writ petition, filed by the appellant, seeking a direction to the 2nd respondent herein, to hand over the shop, which got by way of highest bidder in the auction conducted on 19.7.2016, imposed costs of Rs.25,000/-.

2. According to the appellant, in a public auction conducted on 19.7.2016 by the respondents in respect of a shop bearing No.2, situated in Palladam Bus stand, he stood as a successful bidder for a sum of Rs.30,500/-. It appears that there was a dispute between the appellant and one A.Eswaran as regards the running of the subject shop. According to Eswaran, he appointed the appellant as his Manager to carry on the business on his behalf, but the appellant himself took part in the auction as if he runs the shop independently and managed himself to get the bid knocked in his favour. Therefore, while questioning the auction proceedings, Eswaran approached this Court by way of filing a writ petition in W.P.No.27274 of 2016, the appellant approached this Court by way of filing a writ petition in W.P.No.26793 of 2016, seeking a direction to the respondents herein, to hand over the shop to him since, he stood as a successful bidder in the auction.

3. The learned Judge, had taken up both the writ petitions together and disposed of by a common order, dismissing both the writ petitions.

4. During the pendency of the writ petitions, taking note of the fact that another writ petitioner, namely Eswaran offered more amount than the bid amount quoted by the appellant, the learned Judge, has conducted the auction on 5.8.2016 between the appellant and Eswaran, wherein, it appears that the bid was ultimately confirmed in favour of said Eswaran, since he quoted Rs.70,000/- while the appellant quoted Rs.69,000/-. However, later when the matter was taken up for payment of bid amount, the said Eswaran appeared before the Court and submitted that he was unable to pay the amount and while deprecating the attitude of said Eswaran, the learned Judge enquired as to whether the appellant was ready and willing to pay the amount of Rs.69,000/- which, he quoted, for which, the appellant also expressed his inability. Taking note of the attitude of both the appellant and Eswaran, who deliberately made the Court to believe as if they were interested in bid and wasted the precious judicial time, by order, dated 9.8.2016 dismissed both the writ petitions imposing costs of Rs.25,000/- on both of them.

5. Questioning the above order, dated 9.8.2016, the appellant came forward with the present appeal.

6. Though very many contentions and objections regarding the auction conducted by the learned Judge and imposing the costs, were raised by the learned counsel for the appellant as well the learned standing counsel for respondent 2, we are not inclined to entertain the same since the learned Judge has rightly concluded the matter with the following direction in para 15, as under:

"15. The Commissioner, Palladam Municipality, shall conduct fresh auction for shop No.2, forming the subject matter of W.P.No.27274 of 2016, by

calling for fresh tenders and fixing the upset price and only if the bid amount quoted is higher than the upset price, the shop can be allotted to the bidder concerned. Otherwise, the said shop shall be kept under lock and key by the authority concerned. ..."

7. Having regard to the above, we are not inclined to interfere with the same. However, as regards the payment of costs imposed by the learned Judge, it is pertinent to note that the auction was conducted without there being insistence upon payment of Earnest Money Deposit which is a precondition to be complied with by the aspirant tenderers and having participated in the tender process, if the highest bidder does not turn up to finalize the tender, his earnest money deposit will be forfeited. In the present case, as there was no earnest money deposit, the learned Judge was constrained to impose costs of Rs.25,000/- both on the highest bidder as well as the second highest bidder, the appellant herein, which, in our view the imposition of costs on the second highest bidder is not warranted and therefore, it needs modification.

8. Accordingly, with the above observation, the Writ Appeal is disposed of. No costs. As far as the imposition of the costs of Rs.25,000/- on the appellant herein alone is concerned, it is modified to Rs.5000/- and the imposition of costs of Rs.25,000/-, on the highest bidder, namely, A.Eswaran, is confirmed and in other respects, the order of the learned Judge is confirmed. Consequently, connected CMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

Suk
To

1. The Commissioner, Municipal Administration & Water Works Department, Ezhilagam, Chennai-600 005.
2. The Commissioner,
Palladam Municipality, Palladam.

+ 1 cc to M/s. M. Gnanasehar, Advocate Sr.59365
+ 1 cc to M/s. A.S. Thambusamy, Advocate Sr.58628
+ 1 cc to the Government Pleader Sr.58962

W.A.No.1119 of 2016

PPA(CO)
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