



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.18639 of 2016

J.AMEER BANU

... Petitioner

Vs.

1 THE GENERAL MANAGER
SOUTHERN RAILWAYS,
PARK TOWN, CHENNAI.

2 THE DEPUTY CHIEF MATERIAL MANAGER/SALES
SOUTHERN RAILWAYS, AYANAVARAM
CHENNAI - 23

3 THE DEPUTY MATERIAL MANAGER,
SOUTHERN RAILWAYS
GOLDEN TRACK, PONMALAI
TIRUCHIRAPALLI - 620 004

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the respondents to refund a sum of Rs.5,51,522.00 (Rupees Five Lakhs Fifty One Thousand Five Hundred Twenty Two only) (Amount of Sale Value after deduction of EMD) without any interest to the petitioner within the time span as fixed by this Court.

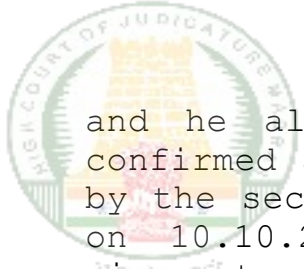
For Petitioner
For Respondents

: Mr.S.Ramesh
: Mr.S.Manohar
Standing Counsel

ORDER

This writ petition has been filed directing the respondents to refund a sum of Rs.5,51,522.00 (Rupees Five Lakhs Fifty One Thousand Five Hundred Twenty Two only) (Amount of Sale Value after deduction of EMD) without any interest to the petitioner within the time span as fixed by this Court.

2.According to the petitioner, her husband A.Jailani participated in the e-auction for removal of Railway scrap materials and he was the highest bidder for a sum of Rs.5,73,760/-



and he also paid the entire amount and the auction was also confirmed and delivery order was also issued to him on 09.10.2014 by the second respondent, but unfortunately, on the next day, I.e on 10.10.2014, her husband had passed away. In the above circumstances, the petitioner was not able to remove the scrap materials, as per the contract, being a lady, she was not able to do the work, hence, she approached the respondents to return the amount paid by her husband. Since no order has been passed, the present writ petition has been filed.

3.The respondents filed a counter affidavit stating that as per the tender condition, the highest bidder should remove the materials within a period of 21 days. The petitioner has not taken any action to remove the same. As per the tender condition, it is not permitted for refund of the amount, in case of failure of removal of the materials. As per Clause IV (4) of General Conditions relating to Auction Sale of Railway Materials through e-auction, 90 days period from the date of auction is permitted for removal of the sold out materials and after the expiry of that period, the sold lots and balance sale value shall ordinarily be forfeited. Except for administrative reasons, the general conditions relating to the auction sale of Railway Materials through e-auction does not permit for refund. From the date of expiry of 90 days, i.e 14.12.2014, the ground rent due to Railways, as on date (10.10.2016) for 715 days, comes to Rs.20,51,192/- at the rate of Rs.2868.80 per day. Apart from that, the material value was also considerably reduced. In these circumstances, if the petitioner's request is accepted, the Railways will incur loss on reduced rate of about Rs.1.51 lakhs and indirect loss on account of ground rent. In view of the above, the petitioner's request cannot be considered.

4.Heard Mr.S.Manohar, learned Standing Counsel appearing for the respondents Southern Railway. I have considered the submissions made on either side and perused the material documents carefully.

5.Admittedly, the petitioner's husband was the highest bidder and he also paid the entire bid amount and after issuing the delivery order, on 09.10.2014, unfortunately, the petitioner's husband died on 10.10.2014, hence no material has been removed, as per the tender condition. It is also an admitted case that sofar, the material has not been removed by the petitioner. Expressing her inability, the petitioner already approached the respondent to refund the amount paid by her husband. Since the material is still with the respondent Railways, it is always open to the Railways to go for another auction and sell the property.

<https://hcservices.ecourts.gov.in/hcservices>
6.The learned counsel appearing for the respondents would submit that due to the inaction on the part of the petitioner, apart from the loss of ground rent, material value was also



drastically reduced to 1.51 lakhs and if the property is sold now, it will fetch much less amount compared to the earlier auction for no fault of the respondents Railway.

7. Taking into consideration of the above facts and since the petitioner being a lady, is expressing her inability to remove the goods, in the interest of justice, it is suffice to direct the respondents to return the amount paid by the petitioner's husband, after deducting the loss of value of the material i.e 1.51 lakhs within a period of 12 weeks from the date of receipt of a copy of this order. The respondents are at liberty to go for fresh auction.

8. With the above direction, the writ petition is disposed of. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1 THE GENERAL MANAGER
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GOLDEN TRACK, PONMALAI
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+1 cc to MR.V.RAGHAVACHARI, Advocate SR.No.66851

+1 cc to MR.S.MANO HAR, Advocate SR.no.66891

W.P(MD) No.18639 of 2016
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SMA/PM-PN/SAR-2/10.03.2017:3P/6C