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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE V. BHARATHIDASAN

W.P. (MD) No. 21298 of 2016

and

W.M.P. (MD) No. 15235 of 2016

M. Narayanan

... Petitioner

Vs.

1. The Joint Commissioner/Executive Officer,
Arulmigu Subramaniaswamy Temple,
Thiruchendur.

2. Thiru. E. Kandan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order in Na.Ka.No.1790/2016/E2-1 dated 01.11.2016 and quash the same and consequently, direct the first respondent to hold a fresh auction after opening the tender cover submitted by the petitioner's father in respect of the right to vend 'Thengai Pazham Thattu' for the fasali 1426.

For Petitioner	: Mr. T. Antony Arul Raj
For R1	: Mr. Muthu Geethaian
For R2	: No appearance

ORDER

The Writ Petition has been filed challenging the impugned order, dated 01.11.2016, passed by the first respondent, refusing to open the tender submitted by the petitioner's father.

2. According to the petitioner, earlier, the first respondent called for tender-cum-auction for granting license to run 'Thengai Pazham Thattu' shops in Arulmigu Subramaniaswamy Temple, Thiruchendur. The petitioner's father Moorthy along with four others submitted their tenders. Due to some litigation pending before this Court, the tenders were not opened and after the litigation was over, the tenders were opened on 02.11.2016. In the mean time, the petitioner's father died on 11.08.2016. At the time of opening of the tenders, since the petitioner's father was passed away, the tender submitted by him was not opened. Therefore, the petitioner approached the



first respondent to open the tender submitted by his father and the first respondent refused to open the tender stating that the tenderer namely the father was passed away. Challenging the same, the present writ petition has been filed.

3. In spite of notice issued to the second respondent and name has been printed in the cause list, none appears for the second respondent.

4. When the matter was came up for hearing, on 07.11.2016, this Court passed the following order:-

"This writ petition has been filed challenging the impugned order passed by the first respondent, dated 01.11.2016.

2. According to the petitioner, the first respondent call for tender-cum-public action for granting license to 'Thengai Pazham Thattu' shops in the Arulmigu Subramaniaswamy Temple, in which, the petitioner's father one Moorthy has participated and also filed his tender and there are totally five tenders.

3. After some litigation, finally, the tender was opened on 02.11.2016, but in the meantime, the petitioner's father died on 11.08.2016. Hence, the petitioner's father's tender was not opened on the ground that the tenderer is no more. In the meantime, the petitioner has made a representation to the authority to consider tender submitted by the petitioner's father and the respondents rejected the request of the petitioner on the ground that on the date of opening of the tender, the petitioner's father is no more, hence, tender cannot be opened as per Section 6(4) of the Transfer of Property Act.

4. The learned Counsel appearing for the respondents submitted that since the date of opening of the tender the petitioner's father is no more, the respondents have not opened the tender filed by the petitioner's father.

5. I have considered the rival submissions.

6. Admittedly, the petitioner's father filed the tender and died before the opening of the tender, now the legal heirs of the tenderer wants participated in the tender process.

7. In the above circumstances, no prejudice would be caused by opening the tender. Therefore, the first respondent is directed to open the tender filed by the petitioner's father on 08.11.2016, after issuing notice to other four tenderer and the legal heirs of the petitioner's father, namely, Moorthy.

8. Post the matter on 09.11.2016."



5. Pursuant to the order passed by this Court, the tenders were opened by the first respondent on 08.11.2016 and it was found that the petitioner's father has quoted Rs.1,90,00,008/- and the second respondent has quoted Rs.1,75,88,888/-.

6. In the above circumstances, this Court, once again passed another order, dated 16.11.2016, which reads as follows:

"This writ petition has been filed challenging the order passed by the first respondent, dated 01.11.2016, refusing to open the tender, submitted by the petitioner's father.

2. According to the petitioner, the first respondent called for a tender cum auction notification for issuance of license for sale of "Thengai Pazham Thattu" in Arulmighu Subramaniaswamy Temple, Thiruchendur. Subsequent to the same, the petitioner's father Moorthy, along with four others submitted their tenders. Then auction was conducted without opening the tender, in which the petitioner's father alone has participated, then, the auction was cancelled, subsequently, the petitioner's father died on 11.08.2016. Thereafter, due to some litigations pending before this Court, tenders were not opened. Subsequently, after completion of litigations, tenders were opened on 02.11.2016. At the time of opening of the tenders, since the petitioner's father was passed away, the tender submitted by him was not opened. Hence, the petitioner approached the first respondent to open the tender, submitted by his father and the first respondent refused to open the tender stating that his father was passed away. Challenging the same, the present writ petition has been filed.

3. Pending writ petition, this Court passed an order on 07.11.2016 directing the first respondent to open the tender submitted by the petitioner's father and post this matter today.

4. When this matter is taken up for hearing today, the learned counsel for the first respondent submitted that after issuing notice to all the tenderers, the tenders were opened on 08.11.2016. At that time, it was found that the petitioner's father has quoted Rs.1,84,000,00/- and the second respondent has quoted Rs.1,75,88,888/-. Hence, the offer made by the petitioner's father is higher than that of the second respondent.



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5. The learned counsel appearing for the petitioner submitted that in view of the highest tender offered by the petitioner's father, licence should be granted to the petitioner.

6. Per contra, the learned counsel appearing for the first respondent submitted that considering the fact that there are five tenderers and also considering the revenue of the temple, the first respondent may be directed to conduct a fresh auction among the five tenderers.

7. In view of the above, the first respondent is directed to conduct auction on or before 25.11.2016, after issuing notice to all the tenderers and by permitting the petitioner herein to participate in the auction.

8. Post the matter for further orders on 29.11.2016."

7. Thereafter, the public auction was conducted on 25.11.2016. The petitioner and his brother one Ramasubramaniam were participated in the above auction, in which the petitioner has quoted Rs.1,90,06,008/- and his brother quoted Rs.1,90,05,008/- and the petitioner was declared as highest bidder.

8. The learned counsel for the first respondent would submit that since already the auction was conducted as per the orders passed by this Court and now they are ready to submit the proposal to the Commissioner, H.R. & C.E. for approval.

9. In the above circumstances, the first respondent is directed to submit the proposal to the Commissioner, H.R. & C.E. Department, within a period of one week from the date of receipt of a copy of this order and on receipt of the same, the Commissioner, H.R. & C.E. Department, is directed to consider the proposal and pass appropriate orders on merits and in accordance with law, ignoring the earlier proposal submitted by the first respondent in favour of the second respondent, within a period of four weeks thereafter.

10. With the above direction, the Writ Petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RTI)



To

The Joint Commissioner/Executive Officer,
Arulmigu Subramaniaswamy Temple,
Thiruchendur.

+1cc to Mr.M.Muthugeethayan, Advocate in SR No.74044

+1cc to Mr.J.Antony Arul Raj, Advocate in SR No.74416

W.P. (MD) No.21298 of 2016
29.11.2016

AKV

ANR/SK-SKN/30.11.2016/5P/4C