

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.30764 of 2017
& WMP No.33686 of 2017

K.Kakkan

..Petitioner

Versus

The Executive Officer,
Thirukoilur Special Grade Town Panchayat,
Thirukoilur, Villupuram District.

..Respondent

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records of the respondent relating to the Tender cum auction notice in Na.Ka.No.A1/185/2013, dated 13.11.2017 published in the newspapers on 18.11.2017, quash the same and consequently direct the respondent to accept the payment of a single common EMD for the tender cum auction process for the shop numbers 1 to 14, 16 to 24, and the Vegetarian Restaurant in the Thirukoilur Bus Stand and enable the bidders to bid for any of the shops of their choice instead of separate EMDs for each shop and restrict the allotment of shops as one shop per successful bidder.

For Petitioner : Mr.R.Karthikeyan

For Respondent : Mr.Manishankar, AAG
assisted by Mr.S.Diwakar, Spl.G.P.
and Mr.R.Venkatesh, G.A.

ORDER

The petitioner has come forward with this writ petition to call for the records of the respondent relating to the Tender cum auction notice in Na.Ka.No.A1/185/2013, dated 13.11.2017 published in the newspapers on 18.11.2017, quash the same and consequently direct the respondent to accept the payment of a single common EMD for the tender cum auction process for the Shop Nos. 1 to 14, and 16 to 24, and the Vegetarian Restaurant in the Thirukoilur Bus Stand and enable the bidders to bid for

any of the shops of their choice instead of separate EMDs for each shop and restrict the allotment of shops as one shop per successful bidder.

2. The learned counsel for the petitioner submitted that the petitioner is an agriculturist and he is also running oil business. The respondent herein has built a row of new shops in the bus stand of Thirukoilur Town and proposed to give out the same on lease by Tender cum auction, and hence they published an auction notice on 13.11.2017 and the EMD is on higher side. When the petitioner approached the respondent, he has been asked to pay EMD for nearly 23 shops at the rate of Rs.2,50,000/- each. Originally, EMD was Rs.3,00,000/-, which was subsequently reduced to Rs.2,50,000/-.

3. The learned counsel drew the attention of the order of this Court dated 17.07.2017 in W.P.Nos.29096 & 24677 of 2016, wherein in case of public auction, every successful bidder would be entitled to allot only one shop and that one person would not be allotted all the shops and it is only to ensure the enjoyment of sharing of wealth to all the successful bidders uniformly and to prevent the concentration of wealth in one hand. It is further submitted by the learned counsel for the petitioner that the petitioner may be permitted to pay a sum of Rs.2,50,000/- and participate in the tender process with regard to all the 23 shops in whole and in case he is a successful bidder, he is willing to pay the remaining amount. He further submitted that payment of EMD is only to ensure that in case of successful bidder only to pay balance amount, he has to forfeit the EMD and that is not going to be the case on hand as the entire EMD is going to be returned. If the petitioner is found to be a successful bidder in one or more shop, as in terms of the order of the Hon'ble Mr. Justice.N.Kirubakaran, a person cannot have more than one shop at that place.

4. Mr.Manishankar, learned Additional Advocate General drew the attention of this Court to the auction notification dated 13.11.2017, wherein it has been stated that the participant will have to pay a sum of Rs.2,50,000/- per shop. If the petitioner is a successful bidder, he will be allotted one shop and the remaining EMD will be returned to the petitioner with regard to other shops, if any EMD is paid with regard to the other shops. He further submitted that as long as the notification been not questioned, this Court doest not have administrative capacity to modify the conditions stipulated in the notification. However, the learned Additional Advocate General stated that if the petitioner is not successful in the auction, his EMD will be returned. Though I found much force in the contentions of the petitioner that demanding a sum of Rs.2,50,000/- for each shop as EMD is unjust, as the notification having not been questioned, I will have to accept the contention of

Mr.Manishankar, learned Additional Advocate General as this Court cannot act as appellate authority or on the administrative side to amend the tender conditions, and this Court cannot interfere with the impugned order unless it is arbitrary. Hence, the petitioner shall be permitted to participate in the auction that is scheduled tomorrow (30.11.2017) and he is permitted to submit the application before the time stipulated today and participate in the auction along with EMD, as per the conditions stipulated in the notice dated 13.11.2017. Mr.Manishankar, learned Additional Advocate appearing for the respondent fairly submitted that even though if this order copy is not ready by this evening, as the officers concerned are present in Court today, he will instruct them to accept the application together with EMD and the case of the petitioner will be scrutinised if all other things are in order.

5. With the above observations and direction the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The Executive Officer,
Thirukoilur Special Grade Town Panchayat,
Thirukoilur, Villupuram District.

W.P.No.30764 of 2017

NR 30/11/2017

सत्यमेव जयते

WEB COPY