

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.992 of 2011
and
M.P.No.1 of 2011

N. Kesavan

... Petitioner

Vs.

1. The Managing Director
Tamil Nadu Housing Board
Nandanam, Chennai-35

2. The Executive Engineer
The Administrative Officer
Tamil Nadu Housing Board
Vellore Housing Unit
Vellore-9.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records in pursuant to the cancellation order issued by the 2nd respondent vide Lr. No. A1/2886/2010 dated 27.12.2010 and the consequent tender cum auction sale notice published on 02.01.2011 in the "Dhina Thanthi" newspaper by the 2nd respondent in so far as Item No.79, reading room property is concerned and quash the same and consequently direct the respondents to confirm the auction conducted on 24.11.2010 in favour of the petitioner so far as the reading room property is concerned and pass further orders.

For Petitioner : Mr.T.P.Prabakaran

For Respondent : Mr.V.Yuvakumar

O R D E R

This writ petition has been filed praying to quash the cancellation order issued by the 2nd respondent in his Lr. No. A1/2886/ 2010 dated 27.12.2010 and the consequent tender-cum-auction-sale notice published on 02.01.2011 in the "Dhina

Thanthi" newspaper, by the 2nd respondent, in so far as Item No.79, reading room property is concerned and consequently direct the respondents to confirm the auction conducted on 24.11.2010 in favour of the petitioner.

2. Learned counsel for the petitioner submitted that the petitioner participated in the auction notified by the 2nd respondent on 01.11.2010 published in the daily newspaper "Dinakaran", for auctioning 89 items of property. The petitioner applied for item No.82, Viz., "VR 151 reading room" for an extent of 6736 sq.ft. The upset price was fixed as Rs.47,29,000/- and so the petitioner paid 15% of the said price as Security Deposit. Since the petitioner's bid amount of Rs.55,01,500/- was the highest, he was declared as the successful bidder in the auction, in respect of the said property. Subsequently, the said auction was cancelled, stating that the sale is rejected due to a new item that appeared in the daily newspaper "Dina Malar" dated 01.12.2010, regarding formation of syndicate during the said auction. The 2nd respondent vide his letter dated 25.12.2010 sent the cancellation order to the petitioner along with a Demand Draft for Rs.15,34,725/- being the security deposit remitted by the petitioner. Learned counsel for the petitioner submits that cancelling an auction based on a news items is legally unsustainable and is liable to be set aside. Learned counsel further submitted that in violation to the appeal provision under Section 11 of the Tamil Nadu Transparency in Tenders Act, 1998, the 2nd respondent published another tender notice for the same property. Aggrieved by the cancellation order and recalling a fresh tender within the appealable time, the petitioner is before this Court, seeking the aforesaid prayer.

3. Learned Standing Counsel for the respondent Housing Board, relying upon the counter affidavits filed by both the respondents, submitted that the respondents published a Notification for sale of 89 Nos. of Commercial Plots, School sites, Public purpose sites in Kalinjur Dharapadaivedu, Arcot Phase-I, 2, Chengam, Ambur, Poliur, Tirupathur Phase-2, Kancheepuram Phase-2, Vellore Phase-4 etc., on 01.11.2010. In the sale cum open auction tender, only 8 sites has been auctioned. Thereafter, the Board by its Memo dated 22.12.2010, confirmed and approved the auction of 5 sites and rejected the remaining 3 sites in Tirupathur Phase 2 Scheme. The Confirmation Committee of the Tamil Nadu Housing Board rejected the said auction based on the complaint published in the daily newspaper "Dinamalar" on 01.12.2010 and instructed the Board to go for re-auction by refixing the upset price at Rs.850/- per sq.ft. The bidder's deposit amount of Rs.15,34,720/- has also been returned through the Syndicate Bank Cheque No.140283 dated 27.12.2010 and same has been received by the petitioner on

30.12.2010. Thereafter only, the petitioner has filed the present writ petition and so the petitioner reserves no right to file the present writ petition. Learned counsel for the respondent Board submitted that in condition No.11 of the Tender Application, it is clearly informed that the auction Sale Committee of the Board reserves the right to confirm or reject the auction sale without assigning any reason thereof. Therefore, the Sale Confirmation Committee of the Board has the right to confirm or reject the auction sale and so the petitioner has no locus standi to question the re-auction conducted by the Board. In view of the cancellation, a fresh notification was issued by the respondent Board on 02.01.2011, by fixing the re-auction date as 21.01.2011. Further, in the auction conducted for the 3 sites, two sites have been finalised with 11.71% and 13.19% excess prices. Pursuant to the order of stay granted by this Court on 19.11.2011, directing the respondents not to make any allotment in so far as item No.79 is concerned, until further orders, the same is yet to be finalised. With regard to item No.79, 3 bidders have participated and their sealed offer applications are kept in a single cover and sealed with their acknowledgement and signature. In view of the above, this writ petition is liable to be dismissed.

4. Heard the learned counsel for the petitioner and the learned Counsel for the Housing Board.

5. As pointed by the learned counsel for the respondents, condition No.11 of the Tender Application reads as follows :-

" The auction Sale Committee of the Board reserves the rights to confirm (or) to reject the auction sale without assigning any reason there for "

However, the petitioner is the highest bidder in the auction and the petitioner's bid amount was placed before the Committee for confirmation of the auction. At that time, complaints were published in the daily newspaper about the conduction of the auction. Due to the complaints, in the interest of the Revenue to the Board, the Committee has decided to cancel the auction held on 24.11.2010, with regard to 3 sites, out of 8 sites. The upset price was also re-fixed as Rs.850/- per sq.ft. Hence, there is no malafide or arbitrariness on the part of the respondents Board/ Confirmation Committee. Unless the petitioner points out there is a malafide exercise on the part of the Board, this Court cannot interfere with the decision of the auction Sale Committee of the Board. It is open to the respondent Board to consider the case of the petitioner, if the bid amount quoted by the present bidders is less than the price quoted by the petitioner. At this juncture, learned counsel for

the respondents, on instructions submitted that the petitioner can participate in the Open Auction to be held by the respondent Board.

6. Therefore, the Writ Petition fails and the same is dismissed. Consequently, the connected M.P is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

avr Sub Assistant Registrar

To

1. The Managing Director
Tamil Nadu Housing Board
Nandanam,
Chennai-35
2. The Executive Engineer
The Administrative Officer
Tamil Nadu Housing Board
Vellore Housing Unit
Vellore-9.

+1cc to Mr.V.Yuvakumar, Advocate, S.R.No.948
+1cc to Mr.T.P.Prabakaran, Advocate, S.R.No.1120

W.P. No. 992 of 2011
and
M.P. No. 1 of 2012

SKV(CO)
CA(03/04/2017)

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