



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.04.2017

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WEB COPY

W.P.(MD)No.6104 of 2017

and

W.M.P(MD)Nos.4836 and 4837 of 2017

M.Balasubramanian

... Petitioner

Vs.

1.The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Palayamkottai,
Tirunelveli District.

2.Arulmighu Gopalakrishnasamy Vagaira Thirukovil,
Krishnapuram,
Kadayanallur, Tirunelveli,
rep. by its Executive Officer (A/I)
Hindu Religious and Charitable Endowment,

...Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned tender notification dated 22.03.2017 in வெ.ஆணை எண்.124/2017இ சே.ம.தொ. அ/தல் issued by the second respondent quash the same and consequently direct the respondents to issue a fresh auction notification without the impugned condition.

For Petitioner : Mr.ARL Sundaresan

Senior Counsel for

Mr.K.Hemakarthiskeyan

For Respondents : Mr.D.Muruganandham A.G.P

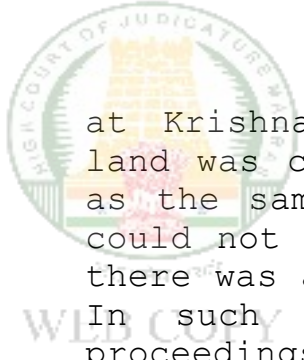
(for R1)

Mr.S.Manokar (for R2)

ORDER

This writ petition has been filed by the petitioner seeking quashment of the impugned tender notification dated 22.03.2017 in வெ.ஆணை எண்.124/2017இ சே.ம.தொ. அ/தல் issued by the second respondent and consequently to direct the respondents to issue a fresh auction notification without the impugned condition.

2.The case of the petitioner is that his father, namely, (late) V.Manalingam was a cultivating tenant under the second respondent temple in the land in survey Nos.179 and 180 situated



at Krishnapuram Taluk, Tenkasi, Tirunelveli District. The said land was continuously under the petitioner's father's cultivation as the same was leased out to him. Because of his old age, he could not continue the cultivation personally and it appears that there was arrears of rent payable to the second respondent temple. In such circumstances, the second respondent had initiated proceedings against the petitioner's father for eviction. In the proceedings for eviction, the petitioner got himself impleaded and appeared to have remitted the entire arrears payable to the second respondent temple and he had also agreed to pay higher rent to the second respondent temple. According to the petitioner, he is in possession and enjoyment of the land as on today. Therefore, the petitioner made a representation to the first respondent to recognize him as a valid lease holder. The first respondent, had passed an order on the representation of the petitioner vide order dated 02.11.2011 and a revision petition has also been filed against the said order before the Commissioner of H.R & C.E., in R.P.No.3 of 2012. The revision was considered and the Commissioner has passed an order setting aside the order passed by the first respondent and a direction was issued to take necessary steps to lease out the property in public auction. As against the order passed by the Commissioner, H.R & C.E., the petitioner preferred a writ petition in W.P(MD)No.6532 of 2013, which was dismissed on 27.09.2016. Thereafter, the petitioner preferred a writ appeal in W.A(MD)No.1404 of 2016, which was also dismissed on 25.11.2016. Against which, a Review Application in Rev.A(MD)No.12 of 2017 was filed and the same is pending before this Court.

3.While matter stood thus, the second respondent issued auction notification, dated 22.03.2017 published on 23.03.2017 and the auction date was fixed on 10.04.2017 at 3.00 p.m. The lease is for the period commencing from 01.05.2017 to 31.04.2018. The auction notification contains clause No.5, which prohibits the persons who have earlier defaulted in payment of any arrears due to the temple and also persons, who had filed cases against the temple from participating in the tender. According to the petitioner, the said clause 5 which prohibits the persons who have filed cases against the temple from participating in the tender, cannot be a valid condition and prescription, as every citizen has fundamental rights to question the action by the respondents in the Court of law.

4.Mr.ARL.Sundaresan, learned Senior Counsel appearing for the petitioner would contend that such a clause incorporated in the auction notification cannot be countenanced in law as that would violate the fundamental rights of the citizens to approach the State for redressing their grievances in regard to any State action.



5. Heard both sides.

6. The objectionable portion which is incorporated in paragraph 5 of the auction notification dated 22.03.2017, in my considered view cannot be valid condition in the eye of law. The clause which prohibits the persons from participating in the auction who have filed any cases against the temple is per se, irrational, arbitrary, unreasonable and cannot stand the list of judicial scrutiny under Article 14 of the Constitution of India. Such a condition is needlessly onerous and unconstitutional and cannot be countenanced under any illegal standards. In such circumstances, the contention raised by the learned Senior counsel has considerable force as the said clause under challenge cannot be countenanced and cannot be allowed to stand.

7. Since the issue raised in the writ petition falls on a narrow campus only with regard to portion of the clause 5 which prohibits the persons who have filed any cases against the second respondent temple from participating in the tender process, the writ petition itself is taken up for hearing and heard the counsels.

8. In view of the above narrative, I am of the considered view that the portion of the clause 5 of the auction notification, dated 22.03.2017 prohibiting the persons who have filed the cases against the second respondent temple from participating in the tender process, is set aside and consequently, the respondents are directed to allow the petitioner to participate in the auction process scheduled to be held on 10.04.2017 and process his application along with others participants. It is made clear that the auction notice is set aside only in respect of the portion of the clause 5 of the auction notification alone as indicated above and all other clause may remain as it is.

9. With these observations, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

/True Copy/

Sub Assistant Registrar



To

1. The Joint Commissioner,
Hindu Religious and Charitable Endowment,
Palayamkottai,
Tirunelveli District.

+1cc to M/S.K.Hemakarthiskeyan, Advocate, SR.50595
+1cc to M/S.Special Government Pleader, SR.50658

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