



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 24.02.2017

Coram

THE HON'BLE MR.JUSTICE M.S.RAMESH

WEB COPY

Writ Petition (MD)No.2575 of 2011andM.P.(MD).No.1 of 2011 &M.P.(MD).No.1783 of 2017

S.Pandi

... Petitioner

Vs

1. The District Collector,
Sivagangai District,
Sivagangai.

2. The Executive Officer,
Selection Grade Panchayat,
Thiruppattur,
Sivagangai District.

3. Kannan

4. Meenakshi

**R4 is impleaded vide Court order
dated 23.01.2017 in W.M.P.(MD) .
No.867 of 2017.**

... 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 impugned auction Notice in Na.Ka.No.78 of 2011 dated 15.02.2011 issued by the second respondent and quash the same as illegal insofar as Shop No.4, Thiurppattur Bus Stand complex and directing the second respondent herein to conduct the re-auction in respect of Shop No.4, Thiruppattur Bus Stand Complex.

(Prayer amended as per vide of this Court date 22.3.2013 and made in MP(MD)NO.2/2011.)

For petitioner	: Mr.S.Kameswaran
For R1	: Mr.T.R.Janarthanan Additional Government Pleader
For R2	: No appearance
For R3	: No appearance
For R4	: Mr.C.D.Johnson

**ORDER**

The petitioner has filed the present writ petition seeking for quashing of an Auction Notification issued on 15.02.2011 for Shop No.4, Thirupathur Bus Stand Complex with the consequential prayer for conducting re-auction of the said shop.

2. Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned counsel for the fourth respondent.

3. The learned counsel for the petitioner submits that when the auction took place on 25.02.2011, he had gone there with the demand draft to participate in the auction to be held on 25.02.2011. The second respondent did not permit him to register his name. But, on the other hand, had registered only the persons belonging to the Ruling Party. Though the petitioner requested the second respondent to permit him to participate in the auction, his request was denied. Hence, he has sent a representation to the first respondent on 28.02.2011 and then filed the present writ petition.

4. The learned counsel for the fourth respondent on the other hand submitted that she was the successful bidder in the auction held on 25.02.2011 and that in view of the pendency of this writ petition, they were unable to occupy the Shop No.4. The learned counsel further submitted that pursuant to the auction conducted, the second respondent had passed a resolution whereby it was resolved that the petitioner is entitled to take possession of the said Shop from the date of handing over of vacant possession till 31.03.2012. However, since the petitioner was in possession of the Shop, they were unable to take possession. The learned counsel also submitted that the petitioner has no locus to be in possession of the said Shop, since no allotment order for the said Shop was ever granted in his favour and that the original allotment was made in favour of one S.K.N.Abdul Karim Ambalam for the period 2008-09 to 2010-2011.

5. There is no representation for the respondents 2 and 3.

6. I have considered the rival submissions made by both the counsels.

7. It is seen that this Court had earlier passed an order of interim injunction for a period of one week to the limited scope of confirming the auction in favour of the fourth respondent. The learned counsel for the petitioner is unable to produce the allotment order made in his favour with regard to the Shop. As such, the petitioner has no authority to be in possession of the Shop. I am unable to understand as to how the second respondent had permitted the petitioner to occupy the premises, when he had neither

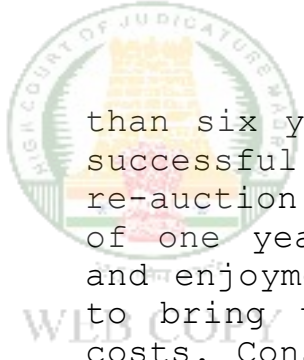


participated in the auction nor had received any allotment order from them. The interim order granted by this Court is also with regard to confirmation of the auction in favour of the fourth respondent and not to ratify or protect the possession of the petitioner in the said Shop. The period for which the auction was proposed to be conducted was one year. However, the petitioner has been in possession of the said Shop for almost 6 years without any authority. Even assuming that the petitioner's averments are true that he was prevented from participating in the auction, the fact that he was in enjoyment of the shop for six years would take care of his grievance. Even if he had participated in the auction and been a successful bidder, his possession in the said Shop would be only for one year.

8. Insofar as the fourth respondent grievance is concerned, the fourth respondent's right to occupy the Shop at this point of time, it is seen from the resolution passed by the second respondent that they intended to give the said Shop for a period of one year commencing from the date of handing over of vacant possession. Though the resolution states that the period for which the lease should be concluded on 31.03.2012, it would be appropriate that the period has to be necessarily calculated from the date of handing over of the Shop alone and not on the concluding date i.e., 31.03.2012. The intention of the second respondent also was to enable the fourth respondent to occupy and enjoy the shop for a period of one year. Hence, the fourth respondent would be entitled for possession of the Shop for a period of one year from the date of handing over possession.

9. The learned counsel for the petitioner at this juncture submitted that he has been paying the rents regularly to the second respondent and has also produced the rental receipt as well as the business tax issued by the second respondent. In my considered view the petitioner is no more than an encroacher in the said Shop, since he has no authority whatsoever to occupy the said premises. The payment of rents and other tax receipts will not entitle him to have a legal possession of the said Shop.

10. Under such circumstance, I do not find any merits in the grounds raised by the petitioner. Accordingly, the writ petition stands dismissed. The second respondent is directed to take immediate steps to evict the petitioner from Shop No.4 at the earliest and consequently, hand over the said Shop No.4 to the fourth respondent, who is the successful bidder in the auction held on 25.02.2011. In any event, such an exercise shall be completed within a period of one month from the date of receipt of a copy of this order. In usual course, this Court would have called for re-auction to enable the petitioner as well as the fourth respondent and any other aspiring competitor to participate in the fresh auction. However, taking note the conduct of the petitioner in having unauthorisedly occupying the shop for more



than six years, thereby depriving the fourth respondent, who is a successful bidder in the auction, I am not inclined to order for re-auction of the said shop. It is made clear that on completion of one year, after the fourth respondent's period of possession and enjoyment of Shop No.4, the second respondent shall endeavour to bring the Shop for open auction in accordance with law. No costs. Consequently, the connected Miscellaneous Petition granting injunction stands vacated.

Sd/-

Assitant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

1.THE DISTRICT COLLECTOR,
SIVAGANGAI DISTRICT,
SIVAGANGAI.

2.THE EXECUTIVE OFFICER,
SELECTION GRADE PANCHATAT,
THIRUPPATHUR, SIVAGANGAI DISTRICT.

+1cc to M/s.C.D.JOHNSON, Advocate, in SR No. 10969
+1cc to M/s.S.KAMESWARAN, Advocate, in SR No. 10629
+1cc to Special Government Pleader, Sr.No. 10931

AKV

AM-SV MMS/15.03.2017 4P 6c

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