* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

+ Writ Petition No.8604 of 2017

% 10-10-2017

# 1. Gold Mine Minerals, Rep. by its Partner Mr. J.Pradeep Reddy, S/o. J.Subba Reddy, Reg. office at: Plot No.8-2-293/82/L/150/A, MLAs Colony, Banjara Hills, Hyderabad, State of Telangana

2. J.Pradeep Reddy, S/o. J.Subba Reddy, Aged about 43 years, Occ: Business, Partner of Gold Mine Minerals, Reg. office at: Plot No.8-2-293/82/L/150/A, MLAs Colony, Banjara Hills, Hyderabad, State of Telangana

... Petitioners

Vs.

$ 1. The State of Telangana, Rep. by its Prl. Secy. to Govt., Revenue (CT-I) Dept., Secretariat Bldgs., Hyderabad

2. The Commissioner of Commercial Taxes, State of Telangana, 3rd Floor, C.T. Complex, Nampally, Hyderabad

3. The Commercial Tax Officer, 5-4-435, 3rd Floor, Old Kakatiya Hotel, Nampally Station, Nampally, Abids, Hyderabad

4. The Deputy Commissioner of Commercial Tax/Auction Officer, Basheerbagh Circle, Abids Division, Nampally, Hyderabad

... Respondents

! Counsel for the Petitioners: Mr. T.Lakshminarayana

Counsel for Respondents 1to4: Mr. M.Govind Reddy, Spl. Standing Counsel

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> Head Note:

? Cases referred:

1. AIR 1971 SC 2295

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Order: (per V.Ramasubramanian, J.)

The petitioner, who became a successful bidder in an auction that took place on 03-01-2017, has come up with the above writ petition seeking return of the money deposited by them, on the ground that the auction has become the subject matter of litigation, without any end in sight.

2. Heard Mr. T.Lakshminarayana, learned counsel for the petitioners and Mr. M.Govind Reddy, learned Special Standing Counsel for the respondents.

3. By a Gazette Notification dated 03-01-2017, the Deputy Commercial Tax Officer brought to sale by public auction, certain lands in terms of the provisions of the Revenue Recovery Act II of 1864, for the default committed by the registered dealers. The auction was held on 08-02-2017. The first petitioner was declared as the highest bidder for a total amount of Rs.7,99,39,803/-. As per the terms and conditions of auction, the petitioner deposited a sum of Rs.1,20,00,000/-, being 15% of the highest bid amount, by way of a cheque on 08-02-2017. It was later replaced by a banker's cheque dated 09-02-2017.

4. But it appears that the dealer who was in default, which led to the auction of his property, had filed an earlier writ petition challenging the order of assessment. The writ

petition was dismissed, but a review was filed later. Subsequently, the defaulting dealer filed one writ petition in W.P.No.434 of 2016 challenging an auction notice issued in the year 2016. After successfully stalling the auction through an interim order, the dealer filed a 3rd writ petition in W.P.No.5061 of 2017 challenging the auction notice dated 03-01-2017, which resulted in the petitioner in this writ petition becoming the highest bidder.

5. It is stated across the Bar that the application for review of the order passed in the first writ petition challenging the order of assessment as well as the subsequent two writ petitions challenging auction notices were taken up together and heard by another Bench of this Court and judgment was reserved.

6. In the light of the fact that the challenge to the assessment order as well as to the auction made by the dealer, has already been heard and reserved for judgment, it was submitted by Mr. M.Govind Reddy, learned Special Standing Counsel that the adjudication in this writ petition could await the orders.

7. However, Mr. T.Lakshminarayana, learned counsel for the petitioners, submitted that his client has already waited for nearly nine months and that the persons from whom the petitioners borrowed money for participating in the auction, are threatening to proceed against him legally. The learned counsel further submitted that the interest for

which he borrowed money for participating in the auction is mounting and that the entire business of the petitioner will be ruined if the money is not refunded.

8. It is true that the fate of the auction cannot hang fire for a long time. The grievances of the petitioner, cannot be belittled, since persons who participate in an auction anticipate a particular time schedule within which things may happen.

9. But at the same time, we cannot lose sight of the fact that the challenge made by the registered dealer to the assessment order as well as the auction notices, is at the stage of attaining finality with a decision likely to come in the near future.

10. There are two possible scenarios that could emerge out of a decision rendered in the writ petitions filed by the dealer. The first is that the assessment order itself may be set aside and the writ petition of the dealer may be allowed. In such an event, the auction held on 08-02-2017 will automatically go and the petitioner will be entitled right royal to take back his money. The second alternative is that the writ petitions filed by the dealer may be dismissed. If that happens, the respondents are obliged to confirm the sale and the petitioner is obliged to pay the balance amount and take the property that was brought to sale.

11. However, it is contended by Mr. T.Lakshminarayana, learned counsel for the petitioner, that the petitioner is

entitled to withdraw his offer at any time before its confirmation. In exercise of such a right, the petitioner has already withdrawn his offer. Therefore, according to the petitioner, he is entitled to return of the money. In this connection, the learned counsel also relies upon a decision of the Supreme Court in ***Union of India v. M/s. Bhimsen Walaiti Ram***[1].

12. At the outset, we do not know how it is contended that the highest bidder in an auction is entitled to withdraw his offer, at any time before the confirmation of sale. The public auction of a property is governed by the terms and conditions contained in the auction notice. Unless a right flows out of the terms and conditions contained in the auction notice, for the withdrawal of the offer at any time before confirmation, the same cannot be claimed as a matter of right.

13. At the most the petitioner can claim as a matter of equity for the withdrawal of the offer and not otherwise. The decision of the Supreme Court in ***Bhimsen Walaiti Ram*** arose out of a demand made by the Chief Commissioner of Excise, for the shortfall that resulted from the re-auction of the liquor shop, after the highest bidder in the first auction walked out. That was a case of a demand made by the Department for the damages suffered by the Department on account of the highest bidder in the first auction walking out

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[1] AIR 1971 SC 2295

and the second auction leading to a lesser bid amount being accepted by the Department. Therefore, the case stands on a completely different footing, as the person who walked out was sought to be mulcted with damages; It was not a case of refund of money. Therefore, the said decision has no application to the facts of the present case.

14. As a matter of fact, the auction notice dated 03-01-2017 contains certain stipulations. Clause 5 of the auction notification states that the same will be stayed if the defaulter or other person, acting on his behalf or claiming an interest tendered the entire amount, provided such tender is made before sunset on the day previous to that appointed for the sale. Clause 6 of the tender notification shows that the sale will not be final until confirmed by the DC (CT). Clause 6 reads as follows:

> "6. The sale will not be final until confirmed by the DC (CT), Abids Division, Hyderabad or other officer empowered in that behalf and a period of thirty days will be allowed between sale and confirmation to admit of parties aggrieved by any proceedings in connection with such sales presenting appeals. On confirmation of the sale, the lands will be registered in the name of the purchaser and a certificate of sale signed and sealed by the DC (CT), Abids Division."

15. It is clear from Clause 6 that all the participants in the auction were put on notice of the contingency that any party aggrieved by the proceedings in connection with the sales may even file an appeal and that the result of the auction will be subject to such appeal. Therefore, a person

who participated in the auction and who was alive to the aforesaid clause contained in the auction notice dated 03-01-2017, cannot come and say that he was not aware of the possibility of challenge by the dealer to the proceedings and that therefore he should be permitted to walk out.

16. As we have pointed out earlier, we are not belittling the grievance of the petitioner, if it is genuine. We are only addressing the argument as to whether he has a right to walk out at his will. This, in our considered opinion, he is not entitled.

17. In the light of the peculiar situation on hand, where the decision in the writ petitions filed by the dealer is likely to come at any time, we are of the considered view that the claim of the petitioner should depend upon the outcome of the said decision. Hence, the writ petition is disposed of to the following effect:

(i) If the writ petitions filed by the dealer are allowed and the auction is set aside, the respondents shall refund the amount of Rs.1,20,00,000/- (Rupees one crore and twenty lakhs only) deposited by the petitioner, within one week of the decision rendered in the writ petitions filed by the dealer;

(ii) In the event of the writ petitions filed by the dealer being dismissed, it is open to the Deputy Commercial Tax Officer either to confirm the auction and demand the payment of balance amount or to consider the claim of the petitioner for walking out and to pass appropriate orders within a period of two weeks from the date of the decision being rendered in the other writ petitions;

(iii) If the petitioner is still aggrieved, by any decision taken pursuant to the preceding clauses, it is open to him to challenge the same in a manner known to law.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

ABHINAND KUMAR SHAVILI, J.

10th October, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

Writ Petition No.8604 of 2017
(per VRS, J.)

10th October, 2017.
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