THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT.JUSTICE T. RAJANI

Writ Appeal No.664 of 2017

Judgment: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

This appeal, under Clause 15 of the Letters Patent, is preferred against the order of the learned Single Judge in W.P. No. 12908 of 2009 dated 18.4.2017. The appellant herein is the petitioner in the writ petition wherein he sought a mandamus directing the respondents to implement the orders of the Joint Commissioner of Estates, Endowments Department dated 20.9.2003, and register the sale of the property in his favour, as he was the highest bidder in the auction and the sale was knocked down in his favour.

The facts, as noted in the order under appeal, are that a publication was caused on 13.11.1997 for auction of the house belonging to Sri Veerabhadra Swamy Temple, Kuravi on 9.12.1997. The appellant, along with others, participated in the auction after depositing the EMD of Rs.10,000/-. As the appellant was the highest bidder at Rs.2,050/- per square yard, he deposited 1/3rd of the total bid amount in terms of the auction notice. The Executive Officer submitted proposals for confirmation of the sale to the Commissioner who, in turn, confirmed the auction on 20.9.2003. Condition No. 6 of the conditions required the highest bidder to pay the balance 2/3rd of the total bid within 15 days of confirmation, and obtain a registered sale deed from the Executive Officer, failing which the temple was entitled to forfeit the deposit of 1/3rd of the bid amount and to re-auction the property. Though the appellant was required to deposit the balance 2/3rd within 15 days, he took nearly ten years from the date of the auction to deposit the amount of Rs.2,50,976/-, and the last payment was made by him only on 29.6.2007. Initially, a notice was issued to the appellant on 25.4.2009 to which the appellant replied on 7.5.2009 demanding registration of the property. On 25.4.2009, the Commissioner, Endowments issued a notice calling upon the appellant to show cause why confirmation of the sale made earlier should not be cancelled, and why 1/3rd of the amount deposited by the appellant should not be forfeited. In his reply, the appellant stated that, since the amount had been paid and accepted, he had spent a substantial amount for improving the property, and as the property was delivered to him, registration should be effected in his favour. The appellant's request was rejected by the Commissioner, Endowments on 27.6.2009, and the Executive Officer was directed to return the amount paid by the appellant. The learned Single Judge has also observed that the record placed before him disclosed initiation of proceedings against the Executive Officer for accepting the amount after expiry of 15 days.

The learned Single Judge observed that, though the appellant had to pay the amount within 15 days of confirmation of sale by the Commissioner, the Executive Officer had accepted the amount till the year 2007 which led to rejecting the request of the appellant for registration, and initiating action against the Executive Officer; the appellant had only questioned the proceedings dated 20.9.2003 wherein the Commissioner of Endowments had enquired about the valuation of the property, and confirmed the sale; the confirmation was cancelled in the year 2009 as the appellant had failed to deposit 2/3rd of the balance amount; the appellant did not challenge the order cancelling the auction, but sought implementation of the confirmation made by the Commissioner earlier; the order passed in the year 2003 merged with the order passed in the year 2009, and hence the appellant ought to have questioned the subsequent proceedings also; no reasons were forthcoming from the appellant as to why he failed to pay the amount within 15 days; acceptance of amounts by the Executive Officer, beyond the stipulated period of 15 days, was illegal for which the authorities had taken action against him; and the mere fact that the Executive Officer had collected the amount did not give any right to the appellant for registration of the property as receipt of payment was contrary to the terms of the auction. The learned Single Judge rejected the appellant's request for registration of the property 20 years from the date of the auction, and also directed the respondents to return the amount deposited by the appellant after confirmation of the sale to him along with interest at 6.5% per annum.

Smt. A. Subbalakshmi, learned counsel for the appellant, would submit that the Executive Officer had received the money, albeit in instalments; the entire amount was paid by the year 2007; and, having accepted the said amount, it was not open to the respondents to now contend that the property should not be registered in favour of the appellant.

As noted hereinabove, the property was subjected to auction on 9.12.1997 and the price quoted by the appellant at Rs.2,050/- per square yard was found to be the highest bid during that period. The conditions of auction required the appellant to deposit the balance 2/3rd of the bid amount within 15 days from the date of confirmation of the sale. The sale was confirmed by the Commissioner on 20.9.2003. The appellant conveniently chose to make payment in instalments till 29.6.2007. Further, as has been observed by the learned Single Judge in the order under appeal, even though the Commissioner passed an order on 27.6.2009, rejecting the appellant's request for registration of the property in his favour, the said order has not been subjected to challenge in the Writ Petition. No explanation is forthcoming from the appellant as to why he failed to make payment within the stipulated time of 15 days from the date of confirmation of the sale. The appellant cannot violate the terms and conditions of the auction, and take advantage of the illegal act of the Executive Officer in receiving payment contrary to the conditions of the auction. The learned Single Judge has rightly exercised discretion not to interfere with the order passed by the Commissioner on 27.6.2009 rejecting the appellant's request for registration. While directing the respondents to conduct auction afresh, the learned Single Judge has adequately protected the appellant's interests in directing the respondents to return the amount deposited by the appellant, after confirmation of the sale, along with interest at 6.5% per annum.

In an intra-Court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal. The writ appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T. RAJANI, J)

2nd June, 2017

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