

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26/04/2018
Delivered on	07/06/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.5447 of 2018 &
W.M.P.Nos.6712 & 6713 of 2013

R.Ashokan

.. Petitioner

Vs.

1.The Commissioner,
Vaniyambadi Municipality,
Vaniyambadi.

2.The Registrar Director of Municipal Administration,
O/o.The RDMA, Kagidapattarai,
Vellore.

.. 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 records relating to the order of the first respondent made in Na.Ka.No.924/2017/A1, dated 17.01.2018, to quash the same and to consequently direct the first respondent to return the Earnest Money Deposit (EMD) amount of Rs.3 Lakhs to the petitioner with accrued interest thereon till date of realization.

For Petitioner : Mr.L.Chandra Kumar

For Respondents: Mr.I.Joseph for R1

Mr.N.Inbanathan

Additional Government Pleader for R2

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O R D E R

The petitioner has come up with the Writ Petition for issuance of Certiorarified Mandamus, to quash the order of the first respondent dated 17.01.2018 forfeiting the EMD of the petitioner and for a direction to the first respondent to return the amount of Rs.3,00,000/- with interest.

2. The brief facts of the case are that a tender notification dated 03.10.2017 was issued to conduct public auction on 26.10.2017 for running the shops in the first respondent-Municipality. One of the tender conditions is that the participant shall deposit Earnest Money Deposit (EMD) of Rs.3,00,000/- for participating in the public auction. It seems that the petitioner and one K.Paneerselvam were contestants for Shop No.2 and the offer of the said K.Paneerselvam of Rs.21,712/- was accepted and he was declared as successful bidder.

3. The case of the petitioner is that his bid of Rs.21,594/- was rejected and on the very next day i.e., on 27.10.2017, he gave a representation seeking refund of the EMD of Rs.3,00,000/-. The first respondent by an impugned order forfeited the EMD for the reason that the petitioner refused to accept the offer of the first respondent to take the shop for his bid amount of Rs.21,594/-.

4. The first respondent in his counter has stated that the successful bidder K.Paneerselvam did not deposit the agreed amount and failed to comply the auction procedure. So, the EMD of Rs.3,00,000/- deposited by K.Paneerselvam was withheld and forfeited by the first respondent. Subsequently, as per the norms and procedures, the next bidder, viz., petitioner was called for to take the shop for the price quoted in the public auction, but the petitioner refused to take up the shop. So, as per the practice of the Municipality, the EMD of Rs.3,00,000/- deposited by the petitioner was forfeited by the first respondent. It is further stated that necessary steps were taken to re-auction the shop No.2, but it has become vain because nobody was interested to participate in the auction for the said shop. So, the petitioner is not entitled to get back the EMD of Rs.3,00,000/-.

5. Heard Mr.L.Chandra Kumar, learned counsel for the petitioner; Mr.I.Joseph, learned counsel for the first respondent and Mr.N.Inbanathan, learned Additional Government Pleader for the second respondent and perused materials available on record.

6. In the case on hand, it is not in dispute that pursuant to the notification dated 03.10.2017, an auction conducted on 26.10.2017, in which, the petitioner and one K.Paneerselvam had participated. Eventually the said Paneerselvam was declared as a successful bidder for Shop No.2. Admittedly, on 27.10.2017, the petitioner submitted a letter seeking refund of EMD.

7. According to the petitioner, immediately after rejection of his bid, he invested in an alternative business and therefore, he did not accept the offer of the first respondent to take up the Shop. The auction notification 15 deals with acceptance or rejection of the highest offer and return of EMD to the unsuccessful tenderers as per the decision of the Council.

8. Clause 16 of the tender notification stipulates that the participants in the tender for any reason cannot withdraw their offer and in that event, the EMD would be forfeited. A plain reading of the Clauses 15 and 16 would show that the Council has got power to order forfeiture of the EMD of the successful bidder, in the event of his failure to comply the other conditions and the EMD deposited by the other participants have to be returned as per the decision of the Council. However, no further clarification has been provided for the cases in which the Council could order forfeiture of EMD of the unsuccessful bidders.

9. In the instant case, the very next day of the auction i.e., 27.10.2017, the petitioner gave a representation for the refund of the amount, but after lapse of about three months on 17.01.2018, an offer was made to the petitioner to take up the shop, he rejected the offer on the same day. When there is no specific condition in the auction notification and no clarity as stated in the above paragraph, to forfeit the EMD of the unsuccessful bidders, the first respondent has no authority to order forfeiture of the amount as per his whims and fancies. . If at all, the first respondent can initiate proceedings to recover the alleged loss from the successful bidder as per the tender notification.

10. In such view, the order impugned in the Writ Petition is liable to be set aside and accordingly set aside and the Writ Petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

r n s

To

1.The Commissioner,
Vaniyambadi Municipality,
Vaniyambadi.

2.The Registrar Director of Municipal Administration,
O/o.The RDMA, Kagidapattarai,
Vellore.

+1cc to the Government Pleader Sr.35828
+2cc to Mr.I.Joseph, Advocate Sr.35661
+1cc to Mr.Chandrakumar, Advocate Sr.35509

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srg 25/06/2018



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