

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 06.04.2018
CORAM
THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.7856 of 2018
and
W.M.P.Nos.9800 to 9802 of 2018

Devendran ...Petitioner

Versus

- 1.The Block Development Officer,
Thalaivasal Panchayat Union,
Attur Taluk,
Salem District.
- 2.The Special Officer,
Block Development Office,
(Village Panchayat),
Thalaivasal Panchayat Union,
Attur Taluk, Salem District. ...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the impugned Public Auction Cum Tender Notice dated 31.03.2018 issued by the respondents with respect to the tender of Vegetable daily Market and Tuesday Weekly Market situated at Thalaivasal Panchayat, Salem District and quash the same and consequently direct the respondents to sanction the lease rights for the year 2018-2019 towards Vegetable daily market and Tuesday Weekly Market of Thalaivasal Panchayat to the petitioner on receipt of 15% extra from the auction amount of previous year i.e 2017-2018 based on the petitioner's representation dated 24.3.2018.

For Petitioner : Mr.K.Kumarasamy
Senior Counsel for
Mr.R.Muniyapparaj

For Respondents : Mrs.P.Rajalakshmi
Additional Government Pleader

O R D E R

Heard Mr.K.Kumarasamy, learned Senior Counsel appearing for the petitioner and Mrs.P.Rajalakshmi, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

2. The petitioner has come forward with the present writ petition seeking for issuance of writ of certiorarified mandamus, to quash the Auction-Cum-Tender Notice, dated 31.3.2018.

3. The case of the petitioner is that he is the existing lessee for the period 2017-2018, for collection of toll charges from the vehicles, vendors in Thalaivasal Vegetable daily Market and Tuesday Weekly Market. His entire family is depending on the income from the toll collection. As per Rule 23 of the Tamil Nadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayat) Rules 2001 [G.O.Ms.No.277, Rural Development (C-4), dated 22.11.2001], (hereinafter referred to as "Tamil Nadu Panchayat Rules"), he is entitled for renewal of lease.

4. The petitioner would further state that on 04.12.2017, he made a representation to the second respondent for renewal of lease for the year 2018-2019. He was informed that there is no board, so, the request of the petitioner could not be considered. Hence, he did not proceed further. The petitioner would allege that all of a sudden, the respondents have issued a public Auction-cum-tender notice dated 10.3.2018 to conduct auction on 27.3.2018. The petitioner approached the respondents on 26.3.2018 by making a representation in person to show his willingness to pay 15 % extra to get the tender for the year 2018-2019. However, without considering the representation of the petitioner, the impugned auction notice has been issued.

5. The second respondent has filed a counter affidavit denying the allegations of the petitioner and further stated that as per Rule 23 of the Tamil Nadu Panchayat Rules, if the existing lessees have desire to continue the lease, they have to make representations for renewal of lease at least three months before the expiry of the lease period. In this case, the petitioner made a representation only on 24.03.2018 and not on 04.12.2017 as alleged by the petitioner. Hence, the request of the petitioner was not considered.

6. It is further stated that earlier an auction notice was issued on 10.3.2018 to conduct auction on 26.3.2018, but due to administrative reasons it was postponed to 27.3.2018. On that day the petitioner also participated and quoted a sum of Rs.86,46,000/-, where as one Mr.Sakthivel, bidded for Rs.90,00,000/-. However, due to consistent and deliberate interruption of the petitioner in the tender proceedings, the bid was not finalised.

7. Mr.A.K.Kumarasamy, the Senior learned counsel appearing for the petitioner submitted that as per Rule 23 of the Tamil Nadu Panchayat Rules, the petitioner exercised his option for

renewal of lease by submitting his representation dated 04.12.2017 and that as per Rule 14 of the Tamil Nadu Panchayat Rules, the notice of auction of lease should have been issued not less than ten days and not more than twenty days prior to the date of auction, but, in the present case, they gave only five days time from the date of notice. It is further submitted that the Rules are statutory in nature, but, mere participation of the petitioner in the auction is not bar to challenge the impugned notification.

8. Per contra, the learned Standing Counsel appearing for the respondents submitted that petitioner has not sent any representation on 04.12.2017 as alleged and no proof was produced to substantiate his case. It is further submitted that the original notification is issued on 10.3.2018, for fixing auction on 26.3.2018, however due to administrative reasons, it was postponed to 27.3.2018. Therefore, the petitioner cannot contented that the respondent has not given sufficient time for conducting the auction. The petitioner after participating in the auction had sent a renewal application on 04.03.2018. Since it was not submitted according to the Rule 23, of the Tamil Nadu Panchayat Rules, it was not considered and there is no illegality in conducting the auction as per the impugned notification.

9. Rule 23, of the Tamil Nadu Panchayat Rules, reads as follows :

(1) The Panchayat shall have power to renew the lease of right of enjoyment of shops, rooms, garages, public markets etc., belonging to it ;

(2) The existing lessee, if he desire to continue the lease for a further period, he may apply to the executive authority or the Commissioner or the Secretary, as the case may be, requesting the renewal of the lease in his favour at least three months before the expiry of the lease period.

10. In the instant case it is not in dispute that the petitioner was a lessee for the period 2017-2018. It is also not in dispute that the lease period expired on 31.3.2018.

11. The case of the petitioner is that he made a representation to the respondent on 04.12.2017, seeking renewal of lease as per Rule 23 of the Tamil Nadu Panchayat Rules. But, in the counter affidavit, the second respondent categorically stated he never received any representation dated 04.12.2017.

12. The learned counsel for the petitioner submitted that the petitioner in fact sent the representation on 04.12.2017, but the respondent has now conveniently saying that they did not receive any representation of the petitioner dated 04.12.2017. Except the statement of the petitioner, no proof has been furnished to establish that the petitioner made a representation on 04.12.2017, in compliance of the Rule 23 of the Tamil Nadu

Panchayat Rules. Therefore, I find it difficult to accept the submissions of the learned counsel for the petitioner.

13. With regard to the next submission of the learned counsel for the petitioner that no sufficient time was given for conducting the auction as per Rule 14 of the Tamil Nadu Panchayat Rules, again I find no substance for the reasons that admittedly the respondents had issued a notification dated 10.3.2018, giving fifteen days time to conduct auction on 27.3.2018 and the present notification is only continuation of the earlier notification. Further indisputably the petitioner has also submitted his tender document and participated in the auction. Therefore, there is no prejudice caused to the petitioner, even if there is no sufficient time provided by the respondents.

14. Considering the above facts and circumstances, I do not find any merit in this writ petition. Hence, this writ petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Block Development Officer,
Thalaivasal Panchayat Union,
Attur Taluk,
Salem District.

2.The Special Officer,
Block Development Office,
(Village Panchayat),
Thalaivasal Panchayat Union,
Attur Taluk, Salem District.

+1 cc to M/s.RMR.Indian Law firm sr 25797

+1 cc to M/s.R.Rajalakshmi Advocate sr 26104

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