IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 24.08.2018
Order pronounced on : 27.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 11033 of 2018
and
W.M.P.s 12939 & 12940 of 2018

G.Kumara Pandiyan ... Petitioner

Vs

1. The District Collector,
   Vellore District,
   Vellore.

2. The Additional Director of
   Panchayat,
   Thirupattur,
   Vellore District.

3. The Commissioner of Panchayat,
   Anaikattu Panchayat Union,
   Anaikattu Taluk,
   Vellore Dt.

4. T.Loganathan ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the entire records in respect of the order dated 06.04.2018 in A.K.390/2018/A4 passed by the 1st respondent and subsequent order dated 07.04.2018 in Na.Ka.No.A4/156/2018 passed by the 3rd respondent and quash the same and consequently direct the respondents 1 to 3 to conduct re-auction to the Weekly Market in Poigai Village for the year 2018-2019.

For Petitioner	:	Mr.D.Rajagopal
For Respondents	:	Mr.A.N.Thambidurai Special Govt. Pleader for Respondents 1 and 2 Mr.S.Jaganathan for R-3 Mr.S.William for R-4

ORDER

This Writ Petition has been filed for challenging the order passed by the 1st respondent District Collector confirming the auction in favour of 4th respondent herein in respect of the Weekly Market in Poigai Village Panchayat in Anaikattu Panchayat Union.

2. The case of the Petitioner is that, a public auction for granting license to collect fees in the Weekly Market at Poigai Village in the Anaikattu Panchayat Union, is conducted by the 3rd respondent on 23.02.2018 for the year 2018-2019. As per the auction notification, the bidders have to deposit Rs.15,000/- as E.M.D. and also to submit the solvency certificate worth about Rs.10,00,000/-. In the said auction, the petitioner and 18 other persons have participated. Finally, the 4th respondent herein is declared as the highest bidder with a bid amount of Rs.1,22,32,000/-. As per clause 4 of the auction notification, the highest bidder should deposit 50% of the auction amount along with 15% GST and 1% of Income Tax within a period of 3 days from the date of auction and the remaining 50% of that amount should be paid in six monthly instalments. According to the petitioner, the 4th respondent did not pay the initial 50% of the deposit amount along with GST and income tax within a period of three days. As per the above clause, the bidder should deposit the amount on or before 30.03.2018 and the successful bidder/4th respondent gave the cheque only on 31.03.2018 for a sum of Rs.77,20,600/-, which was subsequently encashed by the 3rd respondent only on 04.04.2018, As the 4th respondent has failed to deposit the amount within a period of 3 days, the auction should be cancelled as per clause 7 of the auction notification. Despite the same, now by the impugned order, the District Collector has confirmed the auction in favour of 4th respondent and it was also subsequently communicated to the petitioner by the 3rd respondent. Even though the petitioner has sent representation to the respondents 1 to 3, without considering the same, now auction has been confirmed in favour of the 4th respondent. Hence, the petitioner has filed the present Writ Petition.

3. The 3rd respondent Commissioner of Panchayat, Anaikattu Panchayat Union filed the counter affidavit stating that the 4th respondent was the highest bidder in the said auction and as per the auction notification, the 4th respondent has remitted 50% of the auction amount with tax, by way of two cheques (1) bearing No.001763, dated 31.03.2018 for a sum of Rs.47,29,500/- and (2) cheque bearing No.001764, dated 31.03.2018 for a sum of Rs.23,63,900/- within a period of 3 days and the above said amount includes 50% of the highest bid amount, GST and the income tax. Thereafter, the auction was confirmed by the 1st respondent. As the 4th respondent has complied with the auction condition, there is no necessity to cancel the auction. That apart, the petitioner has created law and order problem in the market area by threatening the block officials to not to confirm the auction and also made road-roko at Poigai village. In order to avoid untoward incidents and law and order issues, the 3rd respondent has collected the toll amount.

4. The 4th respondent has filed counter affidavit stating that the auction notification was issued for the collection of toll in Weekly Market in Poigai Village for the period commencing from 01.04.2018 to 31.03.2019 and the auction to be held on 28.03.2018 at 11.00 a.m. On the said day, he has participated in the public auction and his bid amount was Rs.1,22,30,000/-, and he was declared as highest bidder. Immediately, he has paid the amount by way of two cheques (1) bearing No. 001763, dated 31.03.2018 for a sum of Rs. 47,29,500/-and (2) cheque bearing No.001764, dated 31.03.2018 for a sum of Rs.23,63,900/- drawn on Central Bank of India, Poigai Branch towards the 50% of the bid amount plus 15% of the bid amount as GST plus 1% of income tax, totalling a sum of Rs.70,93,400/-. He has further stated that on 29.03.2018 it was declared Government holiday on account of 'Mahaveer Jayanthi', 30.03.2018 also declared as Government Holiday on account of 'Good Friday', and 31.03.2018 is annual yearly closing day for the bank. Thereafter, on 01.04.2018 happened to be a Sunday and on 02.04.2018, the Bank has observed annual yearly closing, wherein no public money transaction was permitted. Thereafter, on 03.04.2018, the cheques were cleared for a sum of Rs.47,29,500/- and due to continuous banking holidays, the 3rd respondent requested the 4th respondent to credit a sum of Rs.23,63,900/- by way of RTGS, but due to online network problem, the amount was credited through RTGS to the 3rd respondent was not accepted. Hence, the said amount was remitted by way of cash in person to the 3rd respondent on 04.04.2018. In view of long banking holidays from 29.03.2018 to 02.04.2018, no money transaction was permitted by the bank. Hence, he has paid

the amount on 04.04.2018. Subsequently, as per the auction notification, he has to pay six monthly instalments on or before 10th of every month commencing from August 2018, and the 1st respondent directed the 4th respondent to pay monthly instalments at the rate of Rs.11,83,400/- per each instalment and now, totally a sum of Rs.35,50,200/- has been paid till date towards three months and this respondent has so far paid a sum of Rs.1,06,43,600/- and he has to pay the remaining 3 monthly instalments of Rs.35,50,200/- only. It is further stated in the counter affidavit that for the year 2017-2018, the highest bid amount is only Rs.68,01,000/-, whereas for the current year it comes to Rs.1,22,30,000/- almost nearly double the previous bid amount. Hence, there is no loss to the Panchayat.

5. I have considered the rival submissions and perused the relevant records carefully.

6. The only grievance of the petitioner in this Writ Petition is that as per clause 4 of the auction notification, the 4th respondent did not pay the 50% of the bid amount along with GST and income tax within a period of three days from the date of auction. The auction was conducted on 28.03.2018 and the highest bid amount of the 4th respondent is Rs.1,22,30,000/-, and he was declared as the highest bidder and he has to deposit 50% of the total bid amount along with 15% of the GST and 1% of Income tax within a period of three days from the date of auction, and the 4th respondent has to pay a sum of Rs.70,93,400/- on or before 31.03.2018.

7. It is the case of the petitioner that the 4th respondent did not pay the amount on or before 30.03.2018 and he has given the cheque bearing No.001763 for a sum of Rs.47,29,500/- dated 31.03.2018 and paid a sum of Rs.23,63,900/-, towards remaining payment on 04.04.2018. Hence, he has not complied with clause 4 of the auction notification, therefore, the auction should be cancelled. But, it is the case of the respondents 3 and 4 that the last date for paying the amount falls on 31.03.2018 as the date of auction viz., 28.03.2018, which date should be excluded for the calculating three days, and the 4th respondent has given two cheques for the said entire amount on 31.03.2018 itself. But, due to long banking holidays, one cheque was realised on 03.04.2018 and due to network problem, RTGS was not accepted in favour of the 3rd respondent and hence, he has paid the sum of Rs.23,53,900/- on 04.04.2018. Accepting the above payment, the 1st respondent has also confirmed the auction. It is the consistent case of the respondents 3 and 4 that the cheques have been given for the entire amount on 31.07.2018, but due to holidays, the amount was not realised. Finally, the cheques were realised on 03.04.2018 and the 4th respondent has paid the remaining amount on 04.04.2018, a detailed affidavit has been filed to that effect.

8. In order to substantiate the contentions that the cheque was issued on 31.03.2018, the 3rd respondent has also produced the entire records and this Court also satisfied that the cheques were given on 31.03.2018, but only due to long banking holidays, the cheques were not realised and finally, part of the amount was encashed on 03.04.2018 and the remaining amount was paid on 04.04.2018. That apart, subsequent to the confirmation also, now the 4th respondent has paid three monthly instalments as per the order passed by the 1st respondent regularly without any default and he has now paid a sum of Rs.1,06,43,600/- towards 9 monthly instalments and he is also running the weekly market for nearly 6 months. Hence, this Court is of the considered view that as the cheques have been given within a period of 3 days and only due to unavoidable reasons, the amount was realised later, for that the petitioner cannot be penalised. Apart from that, on considering the subsequent developments that the 4th respondent is also regularly paying the monthly instalments and he has now paid 9 months instalments, I find no valid reason to interfere with the order passed by the respondents 1 and 3. Hence, in the said circumstances, the Writ Petition stands dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Vellore District,
Vellore.

2. The Additional Director of
Panchayat,
Thirupattur,
Vellore District.

3. The Commissioner of Panchayat,
Anaikattu Panchayat Union,
Anaikattu Taluk,
Vellore Dt.

+1cc to Mr.S.William, Advocate, S.R.No.67326

+1cc to the Government Pleader, S.R.No.67810 & 66847

W.P. 11033 of 2018
and
W.M.P. 12739 & 12940
of 2018

KS(CO)
GSP(22/10/2018)