



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 06.02.2018
PRONOUNCED ON:09.02.2018
CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

WEB COPY

Writ Petition (MD) Nos.525 and 529 of 2018
and
W.M.P (MD) Nos.520, 531 to 533 of 2018

M.Shanmugasundaram ... Petitioner in W.P.(MD)No.525 of 2018
Ganesan ... Petitioner in W.P(MD)No.529 of 2018

Vs.

1.The Executive Engineer,
Public Works Department (WRO),
Thamirabarani Division,
Tirunelveli 627 002.

2.The Junior Engineer,
Public Works Department (WRO),
Manimuthar Channel Section,
Panankulam, Tirunelveli District 627 154.

... Respondents in W.P(MD)No.525 of 2018

1.The Executive Engineer,
PWD/WRO,
Thamaraiparani Basin Division,
Tirunelveli 2.

2.The Assistant Executive Engineer,
PWD/WRO,
Manimutharu Channel Sub Division,
Moolakaraipatti,
Nanguneri Taluk,
Tirunelveli District.

3.The Assistant Engineer,
PWD/WRO,
Manimutharu Channel Section,
Panankulam
Nanguneri Taluk, Tirunelveli District.

... Respondents in W.P(MD)No.529 of 2018

Prayer in W.P(MD)No.525 of 2018: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to the proceedings of the impugned letter No.1/KO.13/2018/E.Po.Pa-1, dated 04.01.2018 on the of the file of the second respondent and quash the same.

<https://hcservices.ecourts.gov.in/hcservices/>
Prayer in W.P(MD)No.529 of 2018: 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



impugned order dated 04.01.2018 made by the third respondent pertaining to the fishery right of Karunkulam Tank, Nanguneri Taluk, Tirunelveli District and quash the same as illegal and consequently direct the respondents to allot the fishery right of Karunkulam Tank, Nanguneri Taluk, Tirunelveli District to the petitioner, by considering that he was higher bidder was Rs.3,00,000/- and by considering the petitioner's representation dated 06.01.2018.

For Petitioner : Mr.G.Prabhu Rajadurai
(In W.P(MD)No.525 of 2018)
For Petitioner : Mr.S.R.Anbarasu
(In W.P(MD)No.529 of 2018)
For Respondents :Mr.M.Rajarajan,
(In both W.Ps) Government Advocate.

COMMON ORDER

Since the issue involved in both the writ petitions are relating to leasing out the fishery rights, the writ petitions are taken up together and disposed of by this common order.

2.The petitioner in W.P(MD)No.525 of 2018 has challenged the cancellation of a confirmation order granting fishing right in favour of the petitioner in respect of Karunkulam Tank at Singikulam Village.

3.According to the petitioner, the Junior Engineer, Public Works Department (WRO), has conducted a public auction to lease out fishing rights in the above said tank wherein the petitioner in W.P (MD)No.529 of 2018 was the highest bidder for a sum of Rs.3 lakhs. Subsequently, he was not prepared to pay the said amount. In the above circumstances, the second respondent conducted re-auction in which the petitioner has offered a sum of Rs.6,000/- and since there is no other bidder, the auction was confirmed in his favour by an order dated 04.01.2018 and thereafter, he has also paid bid amount along with tax. On the very next day, the petitioner purchased fish seedlings for more than Rs.3 lakhs and let the same in the tank. However, on the very next day, namely, on 06.01.2018 without any notice whatsoever, the second respondent cancelled the confirmation order and informed that re-auction would be held on 11.01.2018 for the above said tank. Challenging the same, W.P(MD)No.525 of 2018 has been filed.

4.W.P.(MD)No.529 of 2018 has been filed by the petitioner on the ground that when the earlier auction conducted on 04.01.2018, the petitioner participated and offered Rs.3 lakhs wherein he was the highest bidder and therefore, he was directed to pay a sum of Rs.3,61,000/- including tax and he was ready to pay the amount, while he was counting the money outside the office for deposit with the authorities, the third respondent without any reason whatsoever cancelled the auction and called for re-auction. Since the petitioner was ready and willing to pay the highest bid amount, the third respondent has abruptly cancelled the auction in order to favour some third parties. In the above circumstances, the petitioner has filed W.P(MD)No.529 of 2018 challenging the order cancelling the auction earlier conducted on 04.01.2018 and calling for re-auction on 11.01.2018.



5. Heard Mr.G.Prabhurajadurai, learned counsel appearing for the petitioner in W.P(MD)No.525 of 2018 and Mr.S.R.Anbarasu, learned counsel appearing for the petitioner in W.P(MD)No.529 of 2018 and Mr.M.Rajarajan, learned Government Advocate appearing for the respondents.

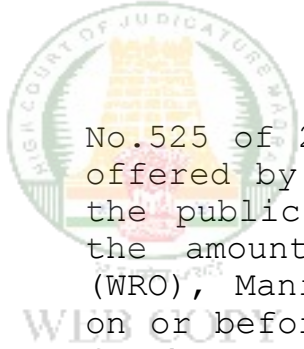
6. Learned counsel appearing for the petitioner in W.P.(MD) No.525 of 2018 contended that when the earlier auction conducted on 04.01.2018, the petitioner in W.P(MD)No.529 of 2018 was the highest bidder but he did not pay the amount and therefore, the auction conducted on 04.01.2018 was cancelled and re-auction was conducted in which the petitioner was the highest bidder for a sum of Rs.6,000/- and he was also paid the entire amount along with tax and thereafter, the auction has been confirmed in his favour. After confirmation, he has let in fish seedlings in the tank to the tune of more than Rs.3 lakhs. Thereafter, based on some instructions given by the higher officials that the bid amount is very low, the second respondent cancelled the auction which is highly arbitrary and illegal and the Assistant Engineer, P.W.D has no power to cancel the auction.

7. Per contra, learned counsel appearing for the petitioner in W.P.(MD)No.529 of 2018 contended that the petitioner is always ready and willing to pay a sum of Rs.3,61,000/- but it is only the respondents refused to receive the amount but arbitrarily cancelled the auction without any reason whatsoever. He would further submit that since the petitioner is ready to pay the amount offered by him, the lease may be granted in his favour.

8. At the time of arguments, learned counsel appearing for the petitioner in W.P(MD)No.525 of 2018 contended that after confirmation of lease, he has let in fish seedlings and by virtue of the order cancelling the auction, the petitioner has now suffered heavy loss. This fact has been disputed by the learned counsel appearing on behalf of the petitioner in W.P(MD)No.529 of 2018 stating that the petitioner has not let in any fish seedlings in the tank.

9. In view of the above dispute, this Court earlier directed the Assistant Director of Fisheries, Tirunelveli District, to inspect the tank at Karungulam in Singikulam Village and file a report whether any fish seedlings were let in in the tank as claimed by the petitioner in W.P(MD)No.525 of 2018 and the Assistant Director of Fisheries after inspecting the tank and conducting netting operations filed his report stating that no fish seeds were caught in the tank in the recent days, some fishes available in the tank could have come either from the source of water or from stocking in the earlier period of water filling. From that report, it is clear that the contention of the petitioner in W.P(MD)No.525 of 2018 that he has let in fish seedlings is not proved.

10. Now the petitioner in W.P(MD)No.529 of 2018 is willing to deposit the bid amount and the learned counsel appearing for the petitioner in W.P.(MD)No.525 of 2018 submitted that he is also willing to match that offer. In those circumstances, this Court decided to conduct auction between them in open Court on 24.01.2018 and the auction was conducted in which the petitioner in W.P.(MD)



No.525 of 2018 has offered a sum of Rs.6,10,000/-. Since the amount offered by the petitioner is much more than original offer made in the public auction, this Court directed the petitioner to deposit the amount before the Junior Engineer, Public Works Department (WRO), Manimuthar Channel Section, Panankulam, Tirunelveli District on or before 01.02.2018 and the matter was posted on 05.02.2018 for further orders. When the matter was posted on 05.02.2018, the learned counsel appearing for the petitioner in W.P(MD)No.525 of 2018 has submitted that the petitioner is not able to deposit the amount and he sought to withdraw the offer made by him. In the above circumstances, this Court has decided to dispose of these writ petitions on its own merits.

11.It is an admitted fact that when the earlier auction conducted on 04.01.2018, the petitioner in W.P.(MD)No.529 of 2018 was the highest bidder and made an offer for a sum of Rs.3 lakhs but that auction has been cancelled on the ground that he has not paid but it was disputed by the petitioner stating that he was always ready and willing to deposit the amount, it is only the respondents have refused to receive the amount. But from the perusal of the order, it could be seen that the auction was already conducted on 04.01.2018 which was cancelled on the ground that the petitioner failed to pay the amount immediately after the auction. In the above circumstances, when the petitioner himself was ready and willing to pay the amount, it is not known as to how this auction has been cancelled on the ground that the petitioner did not pay the amount immediately.

12.So far as the order cancelling the confirmation order granted in favour of the petitioner in W.P(MD)No.525 of 2018 is concerned, in the earlier auction conducted on 04.01.2018, the highest bid amount was Rs.3 lakhs whereas in the next auction, the petitioner in W.P(MD)No.525 of 2018 offered only Rs.6000/- which is very much lower than the earlier bid amount. In the above circumstances, invoking clause No.6 of the auction condition, the second respondent has cancelled the auction and I find no illegality or infirmity in the order, as the second respondent has every right to cancel the order and bring the tank for re-auction. Hence, W.P (MD)No.525 of 2018 is liable to be dismissed.

13.Considering the facts and circumstances, this Court deems it appropriate to direct the third respondent to conduct a re-auction in respect of the above said tank by fixing a sum of Rs.3 lakhs as upset price which was highest offer made in the first auction and after following all the legal formalities. The above said exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order.

14.In the result, W.P(MD)No.525 of 2018 is dismissed and W.P(MD)No.529 of 2018 is disposed of. No costs. Consequently, W.M.P (MD)Nos.520, 531 to 533 of 2018 are closed.

Sd/-

Assistant Registrar(CSIII)



To

- 1.The Executive Engineer,
Public Works Department (WRO),
Thamirabarani Division,
Tirunelveli 627 002.
- 2.The Junior Engineer,
Public Works Department (WRO),
Manimuthar Channel Section,
Panankulam, Tirunelveli District 627 154.
- 3.The Assistant Executive Engineer,
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Tirunelveli District.
- 4.The Assistant Engineer,
PWD/WRO,
Manimutharu Channel Section,
Panankulam
Nanguneri Taluk, Tirunelveli District.

+One cc to The Special Government Pleader, SR.Nos.48277, 48292

+One cc to M/s.G.Prabhu Rajadurai, Advocate, SR.No.47729

sms

RL/7C/5P/SKN/RSK/SAR1/26/2/2018

Common Order made in
Writ Petition (MD) Nos.525 and 529 of 2018
and
W.M.P (MD) Nos.520, 531 to 533 of 2018

09.02.2018