



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :25.07.2018
CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

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W.P.(MD)Nos.8606 of 2018, 15956 & 15957 of 2015
and
W.M.P.Nos.8089 and 8090 of 2018, 1 and 2 of 2015

U.Velayutham : Petitioner in all Writ Petitions

Vs.

1.The Tamil Nadu Housing Board,
Through its Managing Director,
Door No.331, Annasalai,
Nandanam, Chennai 600 035.

2.The Executive Engineer cum Administrative Officer,
Thirunelveli Housing Unit,
Tamil Nadu Housing Board,
Kamarajar Salai,
Anbu Nagar, Thirunelveli 627 011.

:Respondents in all Writ Petitions

PRAYER in W.P.(MD).No.8606 of 2018 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the tender cum auction notification published in Daily Thanthi, Thirunelveli Edition dated 08.04.2018 by the second respondent so far as the commercial site, TV136 is concerned and quash the same.

PRAYER in W.P.(MD).No.15956 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records relating to the impugned tender cum auction notification published in the New Indian Express dated 23.08.2015 by the second respondent and quash the same and so far as the commercial site, TV136 is concerned.

PRAYER in W.P.(MD).No.15957 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order, dated 30.03.2015, in proceedings number Allot.2.4/9660/2015, passed by the first respondent and quash the same and consequentially direct the first respondent to confirm the auction in favour of the petitioner on the basis of the highest bid amount of Rs.81,68,000/- (Rupees Eighty One Lakhs and Sixty Eight Thousand Only) offered by him so far as the commercial site, TV136 is concerned.



In all Writ Petitions:-

For Petitioner : Mr.J.Barathan
For Respondents : Mr.R.Janarthanan
Standing Counsel

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COMMON ORDER

In W.P.(MD).No.8606 of 2018, the petitioner seeks to quash the tender cum auction notification published in Daily Thanthi, Thirunelveli Edition dated 08.04.2018 by the second respondent so far as the commercial site No.TV136 is concerned.

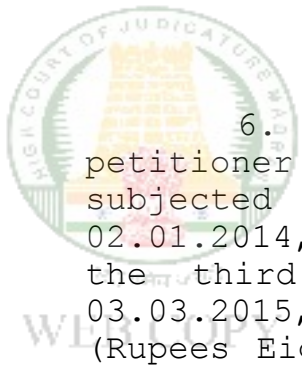
2. In W.P.(MD).No.15956 of 2015, the petitioner seeks to quash the impugned tender cum auction notification published in the New Indian Express dated 23.08.2015 by the second respondent so far as the commercial site No.TV136 is concerned.

3. In W.P.(MD).No.15957 of 2015, the petitioner seeks to quash the impugned order, dated 30.03.2015, in proceedings number Allot.2.4/9660/2015, passed by the first respondent and consequentially direct the first respondent to confirm the auction in favour of the petitioner on the basis of the highest bid amount of Rs.81,68,000/- (Rupees Eighty One Lakhs and Sixty Eight Thousand Only) offered by him so far as the commercial site No.TV136 is concerned.

4. The brief facts of the cases are as follows:

When the property bearing site No.TV136, situated at Kulavanigarapuram Village, Tirunelveli Town, was brought to auction on 23.03.2015, with an upset price of Rs.77,79,000/- (Rupees Seventy Seven Lakhs and Seventy Nine Thousand Only), the petitioner was declared as a highest bidder on his quote of Rs.81,68,000/- (Rupees Eight One Lakhs and Sixty Eight Thousand Only). Subsequently, when the petitioner's bid was sent to the confirmation committee, the same came to be rejected on 30.03.2015, which is under challenge in W.P.(MD).No.15957 of 2015. On 23.08.2015, a fresh auction was called for the same subject property and the upset price is fixed at Rs.82,82,000/- (Rupees Eighty Two Lakhs and Eighty Two Thousand only). Challenging the said auction notification, the petitioner has filed W.P(MD)No.15956 of 2015. In an another auction notification dated 08.04.2018, the upset price was brought down to Rs.75,28,000/- (Rupees Seventy Five Lakhs and Twenty Eight Thousand only), which is also under challenge in W.P.(MD).No.8606 of 2018 by the very same petitioner.

5. Since the petitioner in all the three writ petitions is one and the same, a Common Order is being passed.

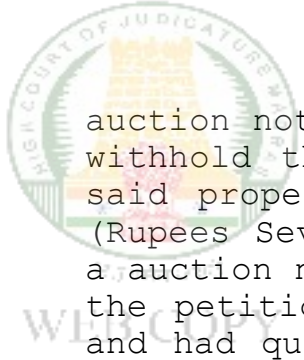


6. Mr.J.Barathan, learned counsel appearing for the petitioner submitted that the property bearing site No.TV136 was subjected to six tender notifications namely, on 03.07.2012, 02.01.2014, 03.03.2015, 23.08.2015, 04.12.2016 and 08.04.2018. In the third auction held under the auction notification dated 03.03.2015, the petitioner had quoted a sum of Rs.81,68,000/- (Rupees Eighty One Lakhs and Sixty Eight Thousand Only) as against the upset price of Rs.77,79,000/- (Rupees Seventy Seven Lakhs and Seventy Nine Thousand Only). Even though the offer was over and above the upset price and two bidders had participated in the said auction, the respondents had refused to confirm the auction in favour of the petitioner, which is prompted him file the writ petition in W.P.(MD).No.15957 of 2015 before this Court. When the said writ petition was pending, the respondents had chosen to bring the subject property for auction on three subsequent occasions. During the auction held on 08.09.2015 in which the upset price was fixed at Rs.82,82,000/- (Rupees Eighty Two Lakhs and Eighty Two Thousand Only), no person came forward with a bid. Likewise, in the subsequent auctions held on 04.12.2016 and 08.04.2018 also, there was no bid. As such since the petitioner had participated in the valid auction held on 23.03.2015 and had quoted amount over and above the upset price, the respondents are bound to confirm the same in his favour.

7. The learned Standing Counsel appearing for the respondents on the other hand submitted that the property in the commercial site No.TV136 is a prime location and by comparing the commercial site No.TV138, he contended that the price quoted by the petitioner herein was too low and that market value of the property would be more than Rs.1,00,00,000/- (Rupees One Crore Only). Hence, the authorities had taken a decision not to confirm the auction in favour of the petitioner. The learned Standing Counsel also submitted that insofar as the auction held on 23.08.2015, 04.12.2016 and 08.04.2018 are concerned, they had not sold the tender schedules and hence, the submission of the learned counsel for the petitioner is incorrect. In view of the fact that the property situated is in a prime location with a high market value, it would not be appropriate to confirm the sale in favour of the petitioner herein for a very meagre sum of Rs.81,68,000/- (Rupees Eighty One Lakhs and Sixty Eight Thousand Only).

8. I have given my careful consideration to the rival submissions made by the learned counsel appearing on either side.

9. It is rather unfortunate that the property, which has been decided to be sold through public auction, has been subjected to six auction notifications between 2012 to 2018. In the earlier auction notifications dated 03.07.2012 and 02.01.2014, no persons had come forward to participate in the tender schedule, even though the upset price was fixed as Rs.75,28,000/- (Rupees Seventy Five Lakhs and Twenty Eight Thousand Only) and Rs.77,79,000/- (Rupees Seventy Seven Lakhs and Seventy Nine Thousand Only) respectively. After the



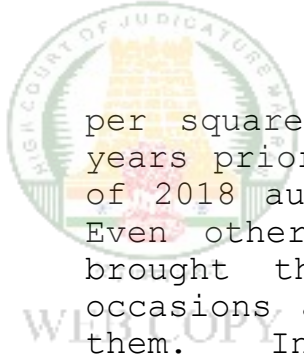
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auction notification dated 02.01.2014, the respondents had chosen to withhold the auction for more than one year and had notified the said property for sale on the same upset price of Rs.77,79,000/- (Rupees Seventy Seven Lakhs and Seventy Nine Thousand Only) through a auction notification dated 03.03.2015. It is in this auction that the petitioner herein had participated along with another tenderer and had quoted a sum of Rs.81,68,000/- (Rupees Eighty One Lakhs and Sixty Eight Thousand Only). Apparently, the petitioner's quote was over and above the upset price. While that being so, when the respondents had chosen to defer the confirmation and subsequent notifications came to be issued on 23.08.2015, 04.12.2016 and 08.04.2018 in which also, there were no bidders. I am unable to accept the submission of the learned Standing Counsel for the respondents that they had not sold any tender schedules for the said auction. In the subsequent auctions, the upset price was fixed at Rs.82,82,000/- (Rupees Eighty Two Lakhs and Eighty Two Thousand Only) and Rs.1,11,55,000/- (Rupees One Crore Eleven lakhs and Fifty Five Thousand Only) respectively. There is no reason adduced in the counter affidavit as to under what circumstances the respondents had not sold the tender schedules. Also there is no logic on the part of the respondents in calling for tenders and allegedly not selling the schedules.

10. On the other hand, it is the specific case of the petitioner that pursuant to the tender notification, there were no offers from any person, in view of the high upset price fixed. In the absence of any explanation for not selling the tender schedules, I am in an agreement with the submissions of the learned Standing Counsel that there were no bidders. Curiously in the last auction notification dated 08.04.2018, the upset price was reduced from the earlier auction notification from Rs.1,11,55,000/- (Rupees One Crore Eleven Lakhs and Fifty Five Thousand Only) to Rs.75,28,000/- (Rupees Seventy Five Lakhs and Twenty Eight Thousand Only). Incidentally, the upset price for 2018 notification was lesser than the upset price fixed three years earlier in the year 2015, in which, the petitioner was declared as the highest bidder. Even in the auction notification of the year 2018, there were no bidders.

11. Since all the efforts taken by the respondents to sell the property have proved futile, except for 2015 auction, in which the petitioner was the successful bidder, no useful purpose would be served by permitting the respondents to exercise their options once more.

12. The learned counsel for the respondents submitted that by bringing the subject property for a fresh auction, the board would be deprived of valuable revenue. According to him, for a similar commercial site No.TV138, the respondent had fixed a higher amount and as such, the present site would be of a much higher value. It is seen that the shop in site No.TV138 was auctioned in the year 2018 and had fixed a sum of Rs.35,55,000/- (Rupees Thirty Five Lakhs and Fifty Five Thousand Only) as sale proof at the rate of Rs.729/-



per square feet. The present impugned auction took place three years prior to the sale in the year 2015. As such, the comparison of 2018 auction with the impugned 2015 auction may not be proper. Even otherwise, pursuant to the 2013 offer, the petitioner has brought the subject property for auction on three subsequent occasions and there were no bidders for the upset price fixed by them. In view of the five futile auctions notified by the respondents, any further opportunity to bring the subject property for any auction would only be a futile excise. Furthermore, the petitioner having been a successful bidder in the year 2015, has been made to wait for almost three years without any justification or a valid reason. As such it would be appropriate that the auction held on 23.03.2015 pursuant to the notification dated 03.03.2015 be declared in favour of the petitioner as the highest bidder.

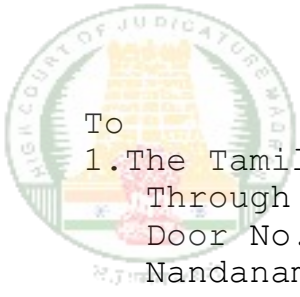
13. Since the writ petition was filed in the year 2015 which is being disposed of in 2018, the value of property would have increased. Though the respondents may not have a legal right to claim for enhanced bid amount, in the interest of the respondent board, it would be appropriate to direct the petitioner to offer a higher sale price over and above the bid that he made in the year 2015. At this juncture, the learned counsel for the petitioner, on instructions, submitted that though the market value of the property is still valued only at Rs.81,00,000/- (Rupees Eighty One Lakhs Only), he has offered to pay a sum of Rs.85,00,000/- (Rupees Eighty Five Lakhs Only) as the sale price for the said shop. In my view, the sale price of Rs.85,00,000/- (Rupees Eighty Five Lakhs Only) would be just and reasonable.

14. In the result, the petitioner's bid in the auction held on 23.03.2015, pursuant to the auction notification dated 03.03.2015, is declared to be fixed at Rs.85,00,000/- (Rupees Eighty Five Lakhs Only) instead of Rs.81,68,000/- (Rupees Eighty One Lakhs and Sixty Eight Thousand Only). The petitioner is directed to pay the second respondent a sum of Rs.85,00,000/- (Rupees Eighty Five Lakhs Only) towards the sale price of the property bearing Site No.TV136, within four weeks from the date of receipt of a copy of this order. Consequently, the respondents are directed to confirm the auction held on 23.03.2015 in favour of the petitioner herein and execute a sale deed in his favour, at least within 30 days from the date of the sale amount.

15. With the above observations, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

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To

1.The Tamil Nadu Housing Board,
Through its Managing Director,
Door No.331, Annasalai,
Nandanam, Chennai 600 035.

2.The Executive Engineer cum Administrative Officer,
Thirunelveli Housing Unit,
Tamil Nadu Housing Board,
Kamarajar Salai,
Anbu Nagar, Thirunelveli 627 011.

+3cc to M/S.R.Janarthanan, Advocate SR.No. 75089 to 75091

+1cc to M/S.T.R.Jeyapalam, Advocate SR.No. 74925

W.P. (MD) Nos.8606 of 2018,
15956 & 15957 of 2015
and

W.M.P.Nos.8089 and
8090 of 2018, 1 and 2 of 2015
25.07.2018

sj i

JM/KAK/SAR 3/11.08.2018/6P/7C