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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.13708 of 2018

and

W.M.P. (MD) No.12455 of 2018

C.Gunaseelan

... Petitioner

vs.

1.The Commissioner

H.R.&C.E.

Nungambakkam High Road

Nungambakkam

Chennai

2.The Commissioner / Fit Person

Arulmigu Subramania Swamy

Thirum Kovil

Thirupparankundram

Madurai-625 005

3.The Deputy Commissioner /

Executive Officer (Additional Incharge)

Arulmigu Subramania Swami Thirukovil

Thirupparankundram, Madurai-625 005

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records pertaining to the impugned proceedings of the third respondent passed in Na.Ka.No.370/2018/E5, dated 12.05.2018 and to quash the same and direct the third respondent to receive the balance tender amount from the petitioner and to allot the property situated in S.No.351/3, an extent of 0.62 Cents of Nakkala-patti, Usilampatti, for the fasali 1428 to 1430 for cultivation as per the tender notification.

For Petitioner : Mr.Babu.Rajendran

For Respondents : Mr.S.Angappan

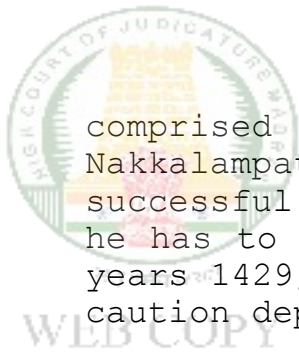
Government Advocate for R1

Mr.Manohar for R2 & R3

O R D E R

The third respondent - Temple called for a public auction for cultivating nanja and punja lands for the fasali years 1428 to 1430, by an Auction Notice dated 20.03.2018 and the auction was conducted on 05.04.2018. Conditions were laid down in the Tender Notice in respect of the auction notified.

2. The petitioner responded to the Auction Notification and participated in the tender conducted in respect of the property



comprised in Survey No.351/3, measuring an extent of 62 Cents, in Nakkalampatty Village, Usilampatty Taluk. The petitioner became the successful bidder in the auction, but as per the tender condition, he has to pay Rs.9,900/-, Rs.1,428/- and Rs.10,395/- for the Fasali years 1429, 1429 and 1430 respectively, in total Rs.31,210/- and the caution deposit being Rs.1,000/-.

3. According to the petitioner, the entire payment could not be made in view of certain difficulties faced by him and it appears that he had paid only a sum of Rs.6,700/-. Since as per the Tender Notification he did not pay the entire amount, the third respondent vide proceedings dated 12.05.2018, forfeited the petitioner's deposit amount. The said proceedings are under challenge in this writ petition.

4. According to the learned counsel for the petitioner, normally it is a practice that payments will be received in installments and not necessarily the same need to be paid in full, while the bid is being granted to the successful bidder. Unfortunately, in the present case, the security deposit was not only forfeited by the impugned proceedings, but the petitioner was also black-listed and debarred from participating in the future auction in respect of the Temple properties.

5. According to the learned counsel for the petitioner, in respect of one other person, the respondent - Temple had collected the amount after the impugned order and therefore, the petitioner was discriminated. The learned counsel for the petitioner would submit that the petitioner is willing to pay the entire amount today itself and the respondents may be directed to confirm the auction in respect of the subject land in his favour for the Fasali years 1428 to 1430.

6. Upon notice, Mr.S.Angappan, learned Government Advocate (Civil Side) entered appearance for the first respondent and Mr.S.Manohar, learned counsel entered appearance for the respondents 2 and 3 and filed a detailed counter affidavit.

7. According to the counter affidavit, the petitioner did not pay the auction amount within the time stipulated and therefore, the Temple had passed a resolution forfeiting his deposit amount and thereafter, the next higher bidder one P.Parthiban was granted licence as per the resolution No.1256, dated 12.05.2018. As regards the acceptance of payment from other person is concerned, it is stated in the counter affidavit that the other person had paid the amount for two Fasali years, namely, 1428 and 1429 on the date of auction itself and only one year is left out, whereas the petitioner did not make any such payment and therefore, he cannot compare himself with the other person.

8. The learned counsel appearing for the respondent - Temple would submit that the grant of licence to the said Parthiban has



been ratified by the competent Authority vide proceedings, dated 14.06.2018 and a copy of the same has been produced before this Court.

9. At this juncture, the learned counsel for the petitioner would submit that although the entire amount had not been paid by the petitioner, however, it was not open to the Temple Authority to debar the petitioner from participating in any such auction for all years to come in future and such a permanent debarment is without any authority or law.

10. This Court, after considering the submissions of the learned counsels on either side and the materials placed on record, is of the view that there appears to be some force in the contentions put forth on behalf of the petitioner that it is not within the authority of the respondent - Temple to permanently debar the petitioner from participating in the future auction. May be, as far as the present auction is concerned, the petitioner's bid could not be confirmed, though he was the highest bidder, in view of the failure to comply with the tender conditions. But, at the same time, the reaction of the Temple Authority in response to the non-compliance of the tender conditions by the petitioner appears to be rather disproportionate and cannot be countenanced either under law or on facts. Although, as on date, the second highest bidder has been granted licence and the same has been ratified, however, the impugned order, insofar as it imposes permanent bar on the petitioner from participating in future auction, cannot be sustained under law and therefore, the same is set aside only insofar as it imposes permanent bar on the petitioner from participating in future auction. However, in regard to the main relief sought by the petitioner in this writ petition is concerned, the same cannot be granted in view of the subsequent development as afore-mentioned.

11. In the above circumstances, the writ petition is partially allowed as held above and the impugned proceedings of the third respondent, in Na.Ka.No.370/2018/E5, dated 12.05.2018, is set aside only to the extent as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar(CS-I)

To:

The Commissioner,
H.R.&C.E.,
Nungambakkam High Road,
Nungambakkam,
Chennai.



+1cc to Mr.BABU RAJENDRAN, Advocate, SR.No.80534
+1cc to Mr.S.MANO HAR, Advocate, SR.No.81091
+1cc to M/s.Special Government Pleader,SR.No. 80773

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