



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.08.2018

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**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

**W.A. (MD) No.550 of 2017
and
C.M.P (MD) No.4589 of 2017
and
WP (MD) 9798 of 2011**

T.Kannan

.. Appellant / Petitioner

vs.

The Commissioner,
Nagercoil Municipality,
Kanyakumari District.

.. Respondent/Respondent

Prayer : Writ Appeal filed under Section 15 of Letters Patent, to set aside the order made in W.P(MD)No.9798 of 2011 dated 23.11.2016.

Prayer in WP(MD)No. 9798 of 2011 :

Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for records relating to the impugned tender cum re-auction notice published by the respondent in his proceedings Na.Ka.No. 16170/2008/A13 dated 16.08.2011 and published on 21.08.2011 in the Thinadhandhi News Paper and quash the same.

For Appellant : Mr.B.Prahalad Ravi

For Respondent : Mr.P.Athimoola Pandian

JUDGMENT

**[Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.]**

This writ appeal is directed against the order passed on 23.11.2016 in W.P(MD)No.9798 of 2011. The said writ petition was filed challenging the tender cum re-auction notice issued by the respondent in his proceedings Na.Ka.No.16170/2008/A13, dated 16.08.2011.



2. It is the case of the appellant that earlier, he was the successful bidder for shop no.4 situated nearby Thai Sei Nala Viduthi at Vadiveeswaram, Nagercoil and the rent was fixed at Rs.4,509/- per month. While so, it is the contention of the appellant that the respondent had issued a tender cum re-auction notice dated 16.08.2011, in respect of shop no.4. Aggrieved by the same, he had filed the writ petition.

3. While disposing of the writ petition, this Court had directed the respondent to adjust the earnest money deposit already deposited by the writ petitioner / appellant and permitted the writ petitioner / appellant also to participate in the tender. Being dissatisfied with the said order, the above writ appeal has been filed by the appellant / writ petitioner contending that his earlier allotment was cancelled abruptly without any notice to him and then, the impugned re-auction notice was issued. Therefore, the respondent should permit the appellant / writ petitioner to continue in shop no.4.

4. The learned counsel for the respondent produced the bid submitted by the appellant himself pursuant to the impugned notification and in which, the appellant offered rent of Rs.7002/- per month and earnest money deposit of Rs.1,00,000/-. However, it is stated that the highest bidder had offered rent of Rs.15,000/- per month. Hence, the appellant could not be allotted shop no.4.

5. Heard the submissions made on either side and perused the materials available on record.

6. Though the appellant had challenged the notification dated 16.08.2011 and also claims to have obtained an order of interim stay, subsequently, he had participated in the tender and lost in the bid. Since the appellant had participated in the tender, he is estopped from challenging the proceedings. The act of the appellant has rendered the appeal itself infructuous.

7. In view of the above, the writ appeal is dismissed. The respondent is directed to return the earnest money deposit of Rs.1,00,000/- made by the appellant. No Costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-I)



To

The Commissioner,
Nagercoil Municipality,
Kanyakumari District.

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+1cc to Mr.B.Prahalad Ravi, Advocate Sr.No.81267

PM

VB/SKN/SAR1/04.10.2018/2P/3C

Judgment made in
W.A (MD) No.550 of 2017
28.08.2018