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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P(MD)No.18855 of 2017

and

W.M.P(MD)No.15213 of 2017

S.Muthuraman

... Petitioner

Vs.

1.The Divisional Forest Officer,
Sivagangai Division,
18, Master Plan Complex,
Sivagangai.

2.The District Collector,
Sivagangai District.

3.Thiyagalingam

4.S.Alagarsamy

5.Sandhamoorthy

6.Kothandaramu

7.Thirupathi

8.Rashin

... Respondents

(RR 3 to 8 impleaded vide order, dated 03.01.2018
in W.M.P(MD)No.19128 of 2017)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the impugned notice in Na.Ka.No.L/1188/2017, dated 26.09.2017 on the file of the first respondent and quash the same and further directing the respondents to conduct auction of the Karuvel and Velikaruvel trees standing in the forest lands by following the procedures adopted by the Revenue Department in respect of earlier auction.

For Petitioner : Mr.G.Prabhu Rajadurai

For RR 1 & 2 : Mr.A.K.Baskara Pandian,
Special Government Pleader.

For RR 3 to 8 : Mr.T.Lajapathi Roy

ORDER

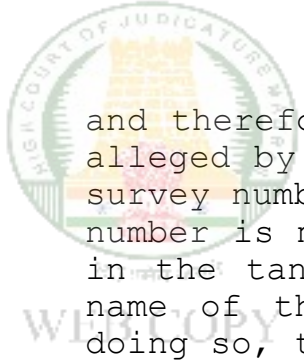
(Order of the Court was made by
M.SATHYANARAYANAN, J.)

The petitioner claims to be the Secretary of Sivagangai District Forest, Revenue, PWD and Local Authority Tree Lease Holders Welfare Association, Sivagangai. The affidavit filed in support of the Writ Petition would aver among other things that in Sivagangai District, firewood trees such as Karuvel and Velikarvel trees were grown providing livelihood to a substantial portion of the population and the said lands are under the control of either the Forest Department or the Revenue or the Public Works Department besides the Local Authorities. Each Department would bring it for auction license/lease to cut and remove the said trees. The petitioner would further aver that license would provide for cutting and removing the trees within the specified land clearly describing the area and survey number so as to enable the intending licensees to identify the land and assess the yield and to participate in the auction. However, in the impugned notification, dated 26.09.2017, issued by the first respondent, such particulars are lacking and therefore the bonafide traders are not in a position to participate in the auction by physically verifying the trees grown in a particular area and as a consequence of which, there would be a revenue loss to the concerned authorities.

2.The petitioner has also pointed out that similar auction proceedings were conducted by the Revenue authorities, wherein clear description of survey numbers, extent of area and details of trees were mentioned and in all fairness, the first respondent ought to have followed the same procedure and conduct auction and since it has not been done so, the petitioner was constrained to approach this Court by filing this Writ Petition.

3.The Writ Petition was entertained on 11.10.2017 and this Court passed an order to the effect that auction, dated 13.10.2017 shall go on and made it clear that the first respondent shall not confirm the auction until further orders and the bids received from the concerned authorities are directed to be kept in a sealed cover.

4.The first respondent has filed the counter affidavit stating among other things that their Department had published Notification regarding auctioning of trees of Social Forest at Sivagangai Social Forestry Division, Sivagangai District for the year 2017-2018 vide Sivagangai District Gazette Notification, dated 16.08.2017 and as per the Notification, auction to be conducted on 13.10.2017 at about 11.00 a.m., by way of duly mentioning the name of the Tank Bed Plantation, extent, type of trees, name of the Village Panchayat, name of the Panchayat Union etc., and that apart 33 General Conditions and 12 Special Conditions had also been imposed which forms part in the District Gazette Notification. The second respondent would further aver that since the name of the tank, in which the social forest is located, is clearly mentioned

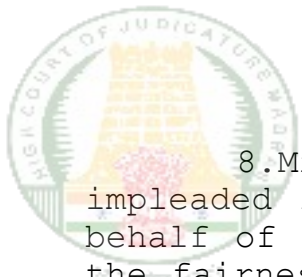


and therefore, there cannot be any ambiguity or non transparency as alleged by the petitioner. With regard to the non mentioning of the survey number, the second respondent took a stand that if the survey number is mentioned that will give a meaning as if the entire trees in the tank is leased out and hence to avoid such confusion, the name of the tank bed plantation is clearly mentioned and before doing so, the extent of the tank bed plantation is duly surveyed and boundaries are marked in the field. The successful bidder in the auction will be given the copy of surveyed sketch of the tank bed plantation and as per one of the condition, anybody interested in participating in the auction can visit the tank bed plantation before the date of auction. Insofar as the stand taken by the petitioner that upset price has been fixed, the second respondent took a stand that upset price has been fixed, then the same will result in formation of Syndicate among the local registering Contractors which would defeat the Revenue of the Forest Department and as such, upset price is not disclosed so as to avoid formation of Syndicate.

5.The second respondent took a stand that the transparency has also been put in place, while conducting auction sale, for the reasons that apart from the Notification, for the conduct of open auction, notices were sent to 77 Contractors and the petitioner himself has participated in the earlier auction and he was a successful bidder and as such, it is not open to him to allege.

6.Mr.G.Prabhu Rajadurai, learned counsel appearing for the petitioner, has drawn the attention of this Court to the typed-set of documents and would submit that since the specific survey number as well as extent of area has not been specifically mentioned in the impugned order, the bidders are not properly and sufficiently informed and as such, in the event of conducting action it may result in revenue loss to the various authorities and only in order to transparency in auction, the petitioner is constrained to approach this Court by filing this Writ Petition and it is filed purely in public interest and prays for quashment of the Notification.

7.Per contra, Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents 1 and 2, has invited the attention of this Court to the counter affidavit of the first respondent and would submit that the counter affidavit clearly enumerates the procedure being adopted for conducting the auction and further invited the attention of this Court to the additional typed set of documents filed on 24.10.2017 on behalf of the second respondent and would submit that the petitioner himself had participated in the auction and he was successful in four bids and the same itself is a proof of the fact that fairness and transparency, in which, auction has been conducted and would further add that the writ petition is not a Public Interest Litigation, but only a litigant to expose, private cause of the petitioner and prays for dismissal of the Writ Petition.



8. Mr. T. Lajapathi Roy, learned counsel appearing for the newly impleaded respondents would submit that counter affidavit filed on behalf of the first respondent clearly gives all the details as to the fairness and transparency, in which, auction has been conducted and has also pointed out that the petitioner himself has participated in the auction and was successful in respect of four bids and as such, it is not open to him to complaint as per the fairness and the procedure and prays for dismissal of the writ petition.

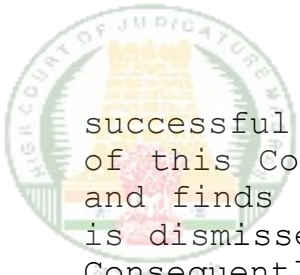
9. This Court has heard the rival submissions made on either side and perused the materials placed on record.

10. The first respondent has issued the Notification, dated 26.09.2017 and a perusal of the Notification gives out the details of the plantation; General Conditions and Special Conditions have also been imposed.

11. It is the specific stand of the first respondent in the counter affidavit that since the tank bed plantation is situated within the tank, the survey number of the tank is not mentioned. If the survey number is mentioned, it will give a meaning as if the entire trees in the tank is leased out and hence to avoid such confusion, the name of the tank bed plantation is clearly mentioned and the extent of the tank bed plantation is duly surveyed and boundaries were also marked and that apart, the successful bidder in the auction will be given the copy of surveyed sketch of the tank bed plantation. The provision is also made available, intending the bidders to visit the spot and inspect the same and insofar as fixation of upset price is concerned, it is the specific case of the second respondent that it is not disclosed for the reasons that in the event of price being disclosed, it may lead to formation of Syndicate and as a consequence of which, conducting auction will get diminished.

12. It is also pertinent to point out at this juncture that the petitioner has also participated in the auction held on 13.10.2017 and was successful in respect of four bids and the explanation offered by the learned Special Government Pleader appearing for the official respondents, that since this Court has directed auction shall go on by indicating that the confirmation of sale shall not take place, he has participated in the auction.

13. This Court does not find fault with the participation of the petitioner in the impugned auction, but the only impediment is that having participated, he cannot turn around and make a challenge to the condition of the auction. In the considered opinion of this Court, the first respondent has evolved a fairness in procedure and also exhibited transparency while in conducting the auction and as already pointed out that the petitioner himself is one of the



successful bidder in respect of four bids. In the considered opinion of this Court, no public interest is involved in the writ petition and finds no merit in this Writ Petition. Hence, the Writ Petition is dismissed. However, in the circumstances of the costs, no costs. Consequently, connected Miscellaneous Petition is dismissed.

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Sd/-
Assistant Registrar(Crl.Side)
/True Copy/
Sub-Assistant Registrar

To

1.The Divisional Forest Officer,
Sivagangai Division,
18, Master Plan Complex,
Sivagangai.

2.The District Collector,
Sivagangai District.

+One cc to Mr.G.Prabhu Rajadurai, Advocate, SR.No.40296

+One cc to Mr.T.Lajpathi Roy, Advocate, SR.No.40180

+One cc to The Special Government Pleader, SR.No.40267

ps
RL/6C/5P/SV/MMS/SAR1/23/1/2018

W.P (MD) No.18855 of 2017

03.01.2018