



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2018

CORAM:

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)Nos.1438 of 2011 and 132 of 2012
and
M.P(MD)No.1 of 2011

W.A(MD)No.1438 of 2011:

P.Manoharan

.. Appellant/Petitioner

Vs.

1. The Senior Manager (Recovery),
The Tamilnadu Industrial Investment
Corporation Ltd.,
Head Office, Chennai.
2. The Regional Manager,
The Tamilnadu Industrial Investment
Corporation Ltd.,
Tirunelveli.
3. The Branch Manager,
The Tamilnadu Industrial Investment
Corporation Ltd.,
No.143, Cape Raod Nagercoil,
Kanyakumari District.

4.T.Jeyasingh

.. Respondents/Respondents

PRAYER: Appeal is filed under Clause 15 of the Letters Patent, to set aside the order passed by this Court in W.P.(MD)No.7338 of 2010, dated 29.10.2011.

Prayer in WP(MD). 7338/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a WRIT OF CERTIORARIFIED MANDAMUS to call for the records on the files of the 3rd respondent pertaining to its order dated 17.03.2010 bearing No. TIIC/NGL/LAO/2009-10 and quash the same and consequently direct the respondents to handover the vacant possession of the property comprised in Resurvey No. 339/8 admeasuring 15.966 cents in Valvachaghosdam village, Kanyakumari District to the petitioner.



For Appellant

:Mr.S.C.Herold Singh

For Respondents

:Mr.S.Suresh

for M/s.Aiyar and Dolia for R.1 to R3

Mr.S.Palanivelayutham for R.4

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W.A(MD)No.132 of 2012:

1. The Senior Manager (Recoverey),
The Tamilnadu Industrial Investment
Corporation Ltd.,
Head Office, Chennai.
2. The Regional Manager,
The Tamilnadu Industrial Investment
Corporation Ltd.,
Tirunelveli.
3. The Branch Manager,
The Tamilnadu Industrial Investment
Corporation Ltd.,
No.143, Cape Raod Nagercoil,
Kanyakumari District.

.. Appellants/Respondents

Vs.

1.P.Manoharan

.. 1st Respondent / Petitioner

2.Jeyasingh

.. 2nd Respondent / 4th Respondent

PRAYER: Appeal is filed under Clause 15 of the Letters Patent, to set aside the order passed by this Court in W.P.(MD)No.7338 of 2010, dated 29.10.2011.

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For Appellants

: Mr.S.Suresh

<https://hcservices.ecourts.gov.in/hcservices/>

for M/s.Aiyar and Dolia

For Respondents

: Mr.S.C.Herold Singh for R.1

No appearance for R.2

**COMMON JUDGMENT**

[Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**]

The writ petitioner is the appellant in W.A.(MD)No.1438 of 2011 and he made a challenge to the impugned communication of the third respondent dated 17.03.2010, in and by which, he was directed to remit the balance bid amount of Rs.8,06,400/- (Rupees Eight Lakhs Six Thousand and Four Hundred only) and execute necessary document in his favour and it was also indicated that if he fails to remit the said amount within the stipulated period, the confirmation of sale in his favour, would be set aside without further intimation and a sum of Rs.2,23,600/- (Rupees Two Lakhs Twenty Three Thousand and Six Hundred only) remitted by him will also be forfeited.

2. The said writ petition, after contest, came to be disposed of, granting relief to the petitioner only to the extent of directing the respondents not to forfeit more than Rs.47,600/- (Rupees Forty Seven Thousand and Six Hundred only) and that it was also indicated that in a fresh action, if the amount received is less than the bid amount made by the petitioner, it is open to the Corporation to consider the bid of the petitioner. The writ petitioner as well as the respondents Corporation, aggrieved by the disposal of the said writ petition, vide impugned order dated 29.10.2011, had filed these writ appeals.

3. The respondents Corporation, in exercise of the powers conferred on them under Section 29 of the State Financial Corporation Act, 1951, took action against the collateral properties, admeasuring to an extent of 15.966 cents in R.S.No.339/8 of Valvachakosdam Village along with the superstructure as well as properties in R.S.Nos.357/6B2 & 357/11 and the writ petitioner, had participated in the said auction in respect of the properties in R.S.Nos.357/6B2 & 357/11. The writ petitioner has also submitted a bid in respect of the property comprised in R.S.No.339/8, for which, he made an offer of Rs.4,26,000/- (Rupees Four Lakhs and Twenty Six Thousand only) and paid a sum of Rs.47,600/- (Rupees Forty Seven Thousand and Six Hundred only) on 30.09.2009. The writ petitioner was declared as a successful bidder and thereafter, he was called for private negotiation on 19.11.2009, wherein, he was pressurized to accept the higher amount of Rs.10,30,000/- (Rupees Ten Lakhs and Thirty Thousand only), with regard to the property comprised in R.S.No.339/8 admeasuring 15.966 cents. The writ petitioner, on account of the financial position, made a request to adjust the bid amount with the earnest money deposit in respect of other properties and accepting the same, the first respondent Corporation vide communication dated 17.03.2010, directed him to



pay a sum of Rs.8,06,400/- (Rupees Eight Lakhs Six Thousand and Four Hundred only).

4. The writ petitioner has visited the property on 05.03.2010 and found that some third party was residing and therefore, made a request to the third respondent to hand over vacant and peaceful possession of the superstructure along with the land. However, it has not been done so and in this regard, he has also given a representation dated 12.03.2010, followed by a legal notice and in response to the same, the impugned communication came to be issued by the second respondent and challenging the legality of the same, he has filed the writ petition and it was heard and entertained and notices were ordered.

5. The third respondent has filed a counter affidavit and took a stand that as per the auction notification, the properties were sought to be sold "as is where is" condition and therefore, the writ petitioner/appellant has to cause inspection of the property and satisfy himself and he has participated in the said auction and he was declared as successful bidder and therefore, he cannot not turn around and take a contra stand and prayed for dismissal of the writ petition.

6. The learned Judge, after taking note of the rival submissions, found that in the auction sale notice itself, the date was fixed as 23.09.2009 to enable the intending bidders to inspect the property and the writ petitioner having missed the opportunity cannot put forth such a reason. The learned Judge, however, observed that the writ petitioner could have remitted the balance amount and sought any other remedy if he was unable to take actual physical possession, but, having failed to do so, he cannot seek a remedy. The learned Judge, however, taking note of the fact that the writ petitioner has made an Earnest Money Deposit of Rs.47,600/- (Rupees Forty Seven Thousand and Six Hundred only) and in the impugned communication, it was indicated that Rs.2,23,600/- (Rupees Two Lakhs Twenty Three Thousand and Six Hundred only) would be forfeited, directed the respondents Corporation to limit the forfeiture to the tune of Earnest Money Deposit of Rs.47,600/- (Rupees Forty Seven Thousand and Six Hundred only) and also granted them liberty to proceed against the writ petitioner in the event of fresh amount in the re-auction is less than the earlier bid amount.

7. The learned Counsel for the appellant in W.A.(MD)No.1438 of 2011 would submit that he was given assurance and undertaken by the respondents to hand over vacant and peaceful possession of the land and superstructure and believing the said representation, he participated in the auction and he was also pressurized for an upset amount of higher bid and it was also accepted by them and therefore, in all fairness, the obligation is cast upon the



respondents to hand over the vacant and peaceful possession of the land and superstructure and having failed to do so, it was totally unfair on their part, but to forfeit the Earnest Money Deposit and also to cancel the auction and he prays for interference.

8. The learned Counsel appearing for the appellants in W.A. (MD) No.132 of 2012 would submit that as per the terms and conditions, it is open to the appellants herein/TIIC to forfeit the entire amount and since the writ petitioner has also accepted and participated in the said auction, the reason assigned by the learned Judge to limit the forfeit amount to a sum of Rs.47,600/- (Rupees Forty Seven Thousand and Six Hundred only) is unsustainable and prays for interference.

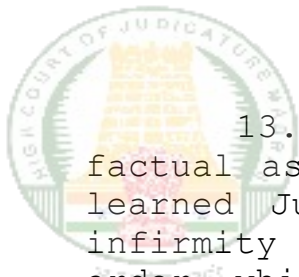
9. This Court considered the rival submissions and perused the documents available on record.

10. The term, "as is where is" came up for consideration before the Honourable Supreme Court in the decision in **United Bank of India Vs. Official Liquidator & others, decided on 06.10.1993**, reported in **(1994) 1 Supreme Court Cases 575**, which pertains to auction sale of the property under liquidation proceedings and the Honourable Supreme Court, in Paragraph 14, observed as follows;

"It is for the intending purchaser to satisfy himself in all respects as to the title, encumbrances and so forth of the immovable property that he proposes to purchase. He cannot after having purchased the property on such terms then claim diminution in the price on the ground of defect in title or description of the property."

11. The writ petitioner, being a Caveat Emptor, is expected to express due care and caution before purchasing an immovable property and having failed to do so, he cannot turn down to make a complaint.

12. Insofar as the limiting of the forfeiture amount, this Court is of the considered view that admittedly, the writ petitioner has quoted the lesser amount and he was pressurized to increase his bid and accordingly, he made a bid and having found that the possession of the property is in occupation of somebody else, he has made a request and it was rejected and taking note of the overall circumstances, the learned Judge has rightly exercised discretion and directed the appellants in W.A. (MD) No.132 of 2012 to limit the forfeiture to the tune of Earnest Money Deposit of Rs.47,600/- (Rupees Forty Seven Thousand and Six Hundred only) and also granted liberty to them to proceed against the writ petitioner in the event of fresh bid secures less than the bid amount made by the petitioner. It cannot be faulted with.



13. This Court, on a thorough consideration of all the factual aspects and on going through the reasons assigned by the learned Judge, is of the considered opinion that there is no infirmity or error apparent on the face of record in the impugned order, which is the subject matter of these writ appeals.

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14. In the result, these writ appeals are dismissed, confirming the order dated 29.10.2011 made in W.P.(MD)No.7338 of 2010. However, in the circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

+1cc to Mr. S.Palanivelayutham, Advocate Sr.No.51150

+1cc to Mr.S.C.Herold Singh, Advocate Sr.No.50501

GK/RMI

VB/KKR/SAR4/07/03/2018/6P/3C

**COMMON JUDGMENT MADE IN
W.A(MD)Nos.1438 of 2011 and 132 of 2012
and
M.P(MD)No.1 of 2011
22.02.2018**