

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2019

CORAM :

THE HON'BLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.1736 of 2019 and

W.M.P.Nos.1939 & 1944 of 2019

C.Venkatesan

.. Petitioner

V.

- 1 The Authorized Officer
Bank of India
Recovery Department
Star House No.324
Oppanakara Street
Coimbatore - 641 001.

- 2 E-Procurement Technologies Limited
Auction Tiger - E-Auction Service Provider
B 705, Wall Street-II, Opp. Orient Club
Near Gujarat College, Ellis Bridge
Ahmedabad - 380 006
Gujarat, India

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for issue of Writ of Certiorarified Mandamus to call for the
records of the e-auction sale of the property being land and building at

S.f.No.246/12A and Patta No.917, New S.F.246/12A1B at Agaramthen Village, Kancheepuram District, measuring an extent of 54 cents conducted on 31.12.2018 on the file of the second Respondent pursuant to the Auction Sale Notice dated 28.11.2018 of the first respondent and quash the said auction sale conducted on 31.12.2018 and consequentially direct the respondents to accept the petitioner offer of Rs.1,71,00,000/- as against the upset price of Rs.1,39,25,000/- for the said property, if the same is the highest and confirm the auction sale of the property in terms of the said auction sale notice in favour of the petitioner.

For Petitioner : Mr.Om Prakash

ORDER

(Order of the Court made by The Hon'ble Chief Justice
and M.DURAI SWAMY,J.)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus to call for the records of the e-auction sale of the property being land and building at S.F.No.246/12A and Patta No.917, New S.F.246/12A1B at Agaramthen Village, Kancheepuram District, measuring an extent of 54 cents

conducted on 31.12.2018 on the file of the respondent No.2, pursuant to the Auction Sale Notice dated 28.11.2018 of the respondent No.1 and quash the auction sale conducted on 31.12.2018 and consequentially direct the respondents to accept the petitioner's offer of Rs.1,71,00,000/- as against the upset price of Rs.1,39,25,000/- for the said property, if the same is the highest bid and confirm the auction sale of the property in terms of the said auction sale notice in favour of the petitioner.

2.1 It is the case of the petitioner that he was intending to participate in the e-auction scheduled to be held on 31.12.2018. Further, it is the case of the petitioner that the petitioner had uploaded all the requisite documents and the proof of payment of EMD in the website and also forwarded the hard copies to the respondent No.1 and on 31.12.2018, on the basis of the user ID and Password granted by the respondent No.2, the petitioner tried to participate in the e-auction, but, there were continuous technical error as "page not found". The petitioner after submitting the digital signature as a requisite for participating in the e-auction, the access has been denied owing to the reason 'signing digital certificate is pending'.

2.2 According to the petitioner, he was deprived of bidding during the entire auction period and the auction proceeded only with a single bidder and all other bidders were kept out by creating technical hitches and playing fraud.

2.3 According to the petitioner, the respondents have wantonly prevented him from participating in the auction by not validating his digital signature and deprived his legitimate right.

3. Admittedly, the petitioner is a third party to the SARFAESI proceedings. According to the petitioner, he was interested in participating in the e-auction scheduled to be held on 31.12.2018. He has stated that he was prevented from participating by the respondents by creating technical hitches and playing fraud.

4. So far as the alleged reasons viz., technical hitches and playing fraud are concerned, the same are matter for evidence and it cannot be decided in the Writ Petition filed under Article 226 of the Constitution. Unless the petitioner establishes the said contentions by

oral and documentary evidences, this issue cannot be decided. Therefore, we are not inclined to entertain the Writ Petition and it is open to the petitioner to challenge the same before the appropriate Forum

With these observations, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

(V.K.T., C.J.) (M.D., J.)
29.01.2019

Index : Yes/No

Speaking Order/Non Speaking Order

Rj

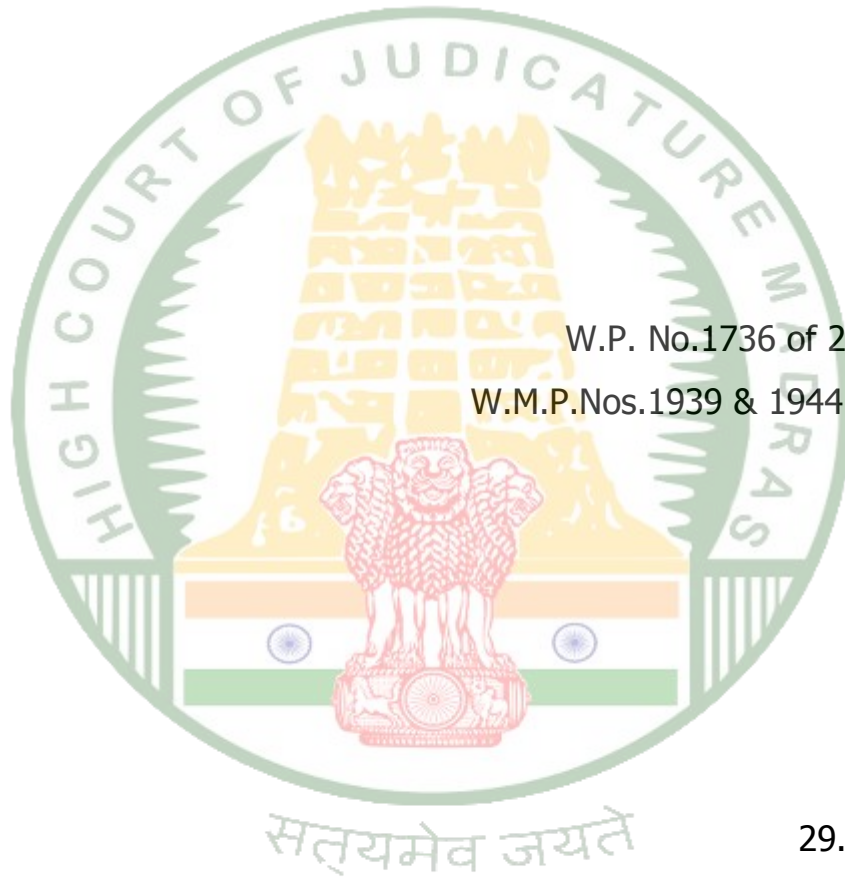
To

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M. DURAISWAMY,J.

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