

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.16436 & 16437 of 2011 and
M.P.Nos.1 and 2 of 2011 in both the W.Ps.

M.B.Khalilur Rehaman .. Petitioner in W.P.No.16436 of 2011
K.R.Shanawaz .. Petitioner in W.P.No.16437 of 2011

-vs-

1. The Member Secretary
Chennai Metropolitan
Development Authority
Chennai 600 008

2. The Chief Executive Officer
Chennai Metropolitan
Development Authority
Egmore, Chennai 600 008.

. Respondents in both the writ petitions

Petitions under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his letter No.K2/10256/2008 dated 26.05.2011, quash the same and further direct him to allot the vacant plot Nos.8 & 7 situate in prime commercial plots abutting 'A' road and Nesapakkam Road at Koyambedu Wholesale Market, Koyambedu, Chennai 600 092 and as per their application Nos.20 & 21 dated 3.3.2011, respectively.

सत्यमेव जयते

For Petitioners :: Mr.M.Raja Sekhar

For Respondents :: Mrs.P.Veena Suresh
Standing Counsel

COMMON ORDER

These two writ petitions have been filed challenging the impugned order passed by the Chief Executive Officer, Chennai Metropolitan Development Authority, Chennai repeatedly cancelling the public auction, in spite of the petitioners

taking part in the auction as the highest bidders, quash the same with a consequential direction to the second respondent to allot the vacant plot Nos.8 & 7 situate in prime commercial plots abutting 'A' road and Nesapakkam Road at Koyambedu Wholesale Market, Koyambedu, Chennai 600 092 and as per their application Nos.20 & 21 dated 3.3.2011, respectively.

2. Learned counsel for the petitioners, assailing the impugned order, stated that when the respondents had called for allotment of vacant plots on 5.9.2002 through paper publication notifying the last date for submission of the applications on 20.9.2002, as no bidder had applied, the auction was cancelled in respect of the commercial plots. Subsequently, on 27.5.2009, again tender notice was issued for sale of the vacant commercial plots in Koyambedu on sealed bid cum open auction for plot Nos.1, 4 to 10. Again in this auction, no one had applied for plot Nos.8 to 10, hence, the same was cancelled. After sometime, the respondents advertised for allotment of plots by paper publication on 1.2.2011. For the first time, the petitioners applied for allotment of plot Nos.8 & 7 to an extent of 9408 sq.ft., as the respondents have quoted Rs.3642/- as the upset price for each plot, and the petitioners also submitted the demand drafts in D.D.Nos.195372 & 195370 dated 3.3.2011 for a sum of Rs.85,65,984/- each towards the Earnest Money Deposit in favour of the respondents and applied for allotment of the vacant site. When the respondents, as per the tender notice dated 1.2.2011, fixed the date for opening of sealed tender on 4.3.2011, the petitioners have applied through two covers, one cover containing the demand draft for EMD and another cover containing the bid amount. After the respondents opened the bid on 4.3.2011, they found that the petitioners were the only applicants in respect of plot Nos.8 & 7 respectively, as they quoted the minimum upset price fixed by the respondents. But the petitioners were informed by the respondents that the allotment orders would be issued shortly and were asked to make arrangements for payment of the balance amount. When the petitioners were waiting for the allotment orders, the respondents failed to issue any order to the petitioners. Subsequently, the petitioners have given their representation on 18.4.2011 expressing their readiness and willingness to pay the balance amount.

3. Arguing further, it was stated that in respect of plot No.5A, two persons, namely, Elangovan and Jayaraman applied for the same and Jayaraman has been declared as the highest bidder and he was allotted the said plot on 9.5.2011. When the petitioners have been waiting for the allotment orders, the respondents have failed to issue any order. But, all of a sudden, the second respondent issued the impugned order rejecting the applications of the petitioners for allotment on the ground that they have quoted the minimum upset price fixed

by the respondents together with the demand drafts for a sum of Rs.85,65,984/- after holding the same for about 82 days. Therefore, left with no other option, they have been advised to come to this Court. Contending further, it was stated that the second respondent has failed to note that prior to the auction held on 1.2.2011, two more auctions were conducted by the respondents for the same plot Nos.8 & 7 and the same were cancelled on the ground that no one applied for the same. It was also contended that even though as per the paper publication dated 5.9.2002, the minimum upset price fixed by the respondents was Rs.1220/- per sq.ft., the same was enhanced to Rs.3500/- on 25.7.2009, which was subsequently enhanced to Rs.3642/- on 1.2.2011. Whereas the minimum upset price quoted by the petitioners has not been contravened in the tender notification. Therefore, when the petitioners have quoted Rs.3642/- as per the minimum upset price, the respondents cannot every time cancel the auction, when they had cancelled the auction proceedings on two occasions. Even on the third occasion also, they cannot do the same wasting the valuable time of the petitioners and the Department, as a result it is well evident that from 2011 till 2019, the respondents have been keeping the plots idle. Hence, the impugned order is liable to be set aside.

4. Detailed counter affidavits have been filed by the respondents. The learned Standing Counsel for the respondents submitted that when the advertisement was given in the 'Daily Thanthi' Tamil newspaper and the Indian Express newspaper for allotment of six vacant prime commercial plots at Koyambedu Wholesale Market, Chennai, four applicants had submitted the tender forms for auction. Finally, the tender box was opened on 4.3.2011 at 3.30 P.M., in the chambers of the Executive Officer in the presence of the tenderers and officials and the petitioners also paid the earnest money deposit of Rs.85,65,984/- on 3.3.2011 for the plot Nos.8 & 7 in Koyambedu Wholesale Market on sealed bid cum open auction on as is where is condition. The counter affidavits also state that the petitioners have quoted the rate at Rs.3642/- per sq.ft., which is the same as the upset cost of Rs.3642/- per sq.ft., quoted by the respondents. But they were the only tenderer for each plot to have appeared, so no auction was conducted. In view thereof, the first respondent had ordered for the reauction to be conducted for plot Nos.8 & 7, as there was competition and good rate for plot No.5A. The said exercise was undertaken as per the terms and conditions of the tender, which states that the CMDA reserves the right to reject any or all the tenders or drop the proposal without assigning any reason thereof. Accordingly, the earnest money deposit was also returned to the petitioners without interest and the petitioners also received the cheques and have not surrendered the original receipt to the office. Again the Chief Executive Officer, the second respondent herein

conducted another auction in the presence of the tenderers and officials. Since Mr.K.Jayaraman and Mr.Elangovan have appeared for the tender cum public auction for plot No.5A along with the demand draft of Rs.32,77,800/- each being the security deposit, taking note of the fact that the two tenderers quoted the rate at Rs.3650/- per sq.ft., for plot No.5A and finally, Mr.K.Jayaraman quoted the highest bid amount of Rs.5010/- per sq.ft., he was issued with the allotment order on 10.5.2011 and was also requested to pay the balance tentative cost of the plot within one month from the date of the allotment order. Whereas in the case of plot Nos.8 & 7, the first respondent had ordered for reauction citing a reason that there was competition and good rate for plot No.5A. Therefore, a direction may be given to the respondents to hold the public auction by giving due publicity in the local newspapers in which the petitioners can also take part and if they quote a higher rate for the plots in question, that would go to the benefit of the respondents.

5. This Court is unable to find any justification on the part of the respondents in repeatedly going for public auction, because, if the respondents are holding a fresh public auction once again and if no bidder comes forward to participate in the auction, it will not only result in loss of time and money to the respondents, but also cause hardship to the petitioners. Therefore, the learned standing counsel for the respondents is directed to take instructions with regard to the fixation of a reasonable rate for the plot Nos.8 & 7 applied by the petitioners.

6. After taking instructions, the learned Standing Counsel for the respondents stated that the present market value per square feet in respect of the plots-in-question is Rs.9050/-. But, it is not known how the respondents can fix the present market value, when the petitioners took part in the auction held in respect of the plots-in-question during 2011.

7. Replying to the same, the learned Standing Counsel appearing for the respondents stated that since the present market value per square feet in respect of the plots-in-question is Rs.9050/-, liberty may be given fixing the time limit to hold public auction inviting applications from the eligible candidates in respect of the plots-in-question.

8. Since now the petitioners agree to pay Rs.7050/- per sq.ft., it is for the respondents to consider the same taking into account that they were the successful bidders in the auction held during 2011 in respect of the plots-in -question within a period of two weeks from the date of receipt of a copy of this Order. Otherwise, if the respondents are of the view that the plots-in-question should be put to fresh public

auction, the said exercise also shall be done within a period of four weeks thereafter.

9. With the above directions, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ss/tsi
To

1. The Member Secretary
Chennai Metropolitan
Development Authority
Chennai 600 008

2. The Chief Executive Officer
Chennai Metropolitan
Development Authority
Egmore, Chennai 600 008

+1cc to Mrs.P.Veena Suresh , Advocate SR.No. 85027
+1cc to Mr.M.Raja Sekhar , Advocate SR.No. 83257

W.P.Nos.16436 & 16437 of 2011

A.SK(13/12/2019)

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