



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. No.21036 of 2009

A.Subramaniam
S/o.K.Arunachalam.

...Petitioner

Versus

1.The Branch Manager,
Tamil Nadu Industrial Investment Corporation Ltd.,
5C/5B, Hotel Sakunthala Shopping Complex,
2nd Floor, Trivandrum Road,
Vannarpettai,
Tirunelveli-627 003.

2.The Deputy General Manager (Recovery)
The Tamil Nadu Industrial Investment Corpn. Ltd.,
New No.692, Anna Salai,
Nandanam, Chennai-35.

3.The Tamil Ndu Industrial Investment Corporation,
New No.692, Anna Salai,
Nandanam, Chennai-35.

...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of 2nd respondent dated 11.09.2009 made in HO/REC/TNY/VGS/2009-10, quash the same and direct the respondents to execute the sale deed in favour of the petitioner without imposing any penalty for the property namely land in survey No.687/2A, Coonoor Municipality, Nilgiris, admeasuring 15 cents and building thereon measuring 1725 sq.ft RCC in Ground Floor and 1677 Sq.ft. RCC in First Floor with Door No.69 and 70, Jois Cottage Road, Apple by area, Coonoor, Nilgiris District.

For Petitioner : Mr.K.Rajasekaran

For Respondents : Mr.A.Paneerselvam



O R D E R

This petition has been filed seeking to quash the proceedings of 2nd respondent dated 11.09.2009 made in HO/REC/TNY/VGS/2009-10 and direct the respondents to execute the sale deed in favour of the petitioner without imposing any penalty for delay in execution of sale deed for his property situated at Coonoor, Nilgiris District.

2.The first respondent conducted an auction for sale of the property situated in Survey No.687/2A with house building at Door No.69 and 70 (Ground Floor and 1st floor), "Aruna"Jois Cottage Raod, Apple by area, Welligton Bazaar, Coonoor, Nilgiris District. The petitioner participated in the auction held on 24.02.2003 for the above mentioned property and offered Rs.25 Lakhs, which is the highest bid amount and the auction was confirmed in favor of the petitioner subject to the terms and conditions of auction sale. Immediately after confirmation, the petitioner was asked to remit the balance amount of Rs.22,50,000/- on or before 28.03.2003. Accordingly, the petitioner paid the balance 90% amount i.e. Rs.22,50,000/- within the stipulated time and the first respondent hand over the symbolic possession of the property in as is where is condition to the petitioner on 04.04.2003 and the same was received by the petitioner. However, there was a dispute with regard to one Lalitha Viridi, who is a tenant in the said property under the erstwhile owner of the property and the tenancy was transferred to the petitioner with the auction sale. Since the said Lalitha Viridi, refused to vacate the house and there was series of dispute between the said Lalitha Viridi and the petitioner, the petitioner was not able to obtain the sale deed from the first respondent. Only after resolving the dispute between the petitioner and the tenant, the petitioner made representation to the respondents for execution of sale deed in his favour. However, the respondent demanded penalty of 1% per annum on the bid amount of Rs.25,00,000/- as per Corporation policy, which works out to Rs.1,50,000/-. The petitioner sent representation to waive the penalty and to execute the sale deed in his favor. Since, the same was not considered by the respondents, the petitioner has filed the present petition with the aforesaid prayer.

3.The learned counsel for the petitioner submitted that the terms and condition of the tender has clearly stipulated the time period for paying the EMD is on the date of auction and the balance bid amount to be paid within 30 days from confirmation of bid. The petitioner did not violate any of the condition and paid 10% amount on 24.02.2003 and the balance on 28.03.2003. There is no violation for depositing te entire amount. Since



the sale deed was not obtained by the petitioner due to some dispute between the petitioner and the tenant for which the Corporation levied penalty of 1% per annum on the bid amount is unsustainable one and there is no provision available. Without any provision, the demand of penalty by the first respondent is unsustainable. Accordingly, he prays to allow the petition.

4. Per contra, the learned counsel for the respondents submitted that the petitioner's father viz., K.Arunachalam offered a land owned by him measuring 15 cents in S.No.687/2A and house building thereon bearing door Nos.69 and 70 at Coonoor Municipality, Nilgiris District as collateral security. Since the petitioner's father did not repaid the loan, the collateral property was brought for sale in public auction on 24.04.2003 in "as is where is" condition after giving due notice to K.Arunachalam. The petitioner participated in the auction and offered 25,00,000/- and he was declared as highest bidder and the auction has been confirmed in favour of the petitioner. He further submitted that as per the conditions of sale, the successful/highest bidder after confirmation by third respondent Corporation shall acknowledge the bid and accept the terms and conditions for sale in writing. The third respondent Corporation after auction will issue the sale deed or delivery note to the successful tenderer/bidder or his nominee. A person who wishes to participate in the public auction shall pay the earnest money deposit and the highest bidder has to deposit 10% of tender amount or bid amount as advance on the day of auction and the balance of 90% is payable within 30 days from the date of receipt of confirmation of sale from the corporation. If the entire amount of bid is paid to the Corporation within the time, then the Corporation shall execute and register the sale deed in favor of the highest bidder for the land and building at the cost of bidder. The petitioner has paid Rs.2,50,000/- as earnest money deposit on the day of auction and also paid the balance amount of Rs.22,50,000/- on 28.03.2003. Thereafter the respondent Corporation handed over the symbolic possession of the property on 04.04.2003, which was duly received by the petitioner. At the time of auction for sale, the terms and conditions of sale were clearly informed to the petitioner and accordingly he paid the balance amount within the stipulated time. However, he failed to execute the sale deed within the stipulated time. Hence, he was asked to pay 1% per annum of the total bid amount as penalty for the delay in execution of sale deed. The learned counsel further submitted that the petitioner is well aware of the fact that his father K.Arunachalam has offered the property as collateral security in favour of the respondent corporation. The petitioner is also aware of the tenant i.e. Lalitha Virdi is occupying the property even before participating in the auction. The respondent Corporation vide its letter dated 29.04.2003 informed



the petitioner for his letter dated 28.04.2003, that it is not tenable to hand over the peaceful and vacant possession of the property and informed him that he is well aware of the tenancy well before participating in the auction. Though, the petitioner stated that in view of the criminal proceedings against him by the erstwhile tenant, he was not able to execute the sale deed, the respondent Corporation as per policy decision has demanded Rs.1,25,000/- as penalty for the delay in execution of sale deed. Accordingly, he prays for dismissal of the petition.

5. Heard Mr.K.Rajasekaran, learned counsel for the petitioner and Mr.A.Panneerselvam, learned counsel for respondents and perused the materials on record.

6. On perusal of records, it is seen that the petitioner's father offered the above said property as collateral security in favor of the respondent Corporation while availing loan. Since the borrower Company/petitioner's father has not repaid the loan, the respondent Corporation has brought the property for sale in public auction on 24.02.2003. The petitioner also participated in the auction and paid Rs.2,50,000/- towards EMD and he is the successful bidder and the auction has been confirmed on him. Immediately after the confirmation of sale in favor of the petitioner, the petitioner paid the balance of 90% of bid amount i.e., Rs.22,50,000/- within the stipulated time without any violation of terms and conditions. Therefore, the demand of 1% on the bid amount per annum for the delay in executing the sale deed is illegal and unsustainable. In the absence of any provisions of law, demanding 1% of bid amount as penalty is against the terms and conditions of auction. I do not have any hesitation to quash the proceedings dated 11.09.2009 made in HO/REC/TNY/VGS/2009-10 passed by the second respondent.

7. Accordingly, this writ petition is allowed and the proceedings dated 11.09.2009 passed by the second respondent is hereby quashed. The respondent is directed to execute the sale deed in favour of the petitioner without imposing any penalty for delay in execution of sale deed, within eight weeks from the date of receipt of copy of the order. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar



To

1.The Branch Manager,
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3.The Tamil Nadu Industrial Investment Corporation,
New No.692, Anna Salai,
Nandanam, Chennai-35.

+1 CC to Mr.K.Rajasekaran, Advocate sr 62860.

+1 CC to Mr.A.Paneerselvam, Advocate sr 63629.

W.P. No.21036 of 2009

MP(CO)
SP(04/09/2019)