

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.34232 of 2005

M/s.Nilofar Traders,
Rep. by it Branch Manager,
No.172, Cuddalore Main Road,
Neyveli - 607802.Petitioner

Vs

The Tamil Nadu Industrial
Investment Corporation Ltd.,
Special Recovery Branch Division II,
86, C&D, 2nd Main Road,
Ambattur Industrial Estate,
Chennai - 600058.Respondent

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Mandamus or any
other appropriate writ or direction to direct the
respondent to return the EMD tendered to it on
26.09.2003.

For Petitioner : Mr.Avinash Wadhwani
for Mr.V.Raghavachari
For Respondents: Mr.V.Kalyana Raman
for M/s.Aiyar & Dolia

O R D E R

The prayer in the writ petition is for a return of
the earnest money deposit of Rs.50,000/-, which the
petitioner had remitted in connection with an auction
held on 14.08.2003.

2. According to the learned counsel for the
petitioner, the respondent had issued an auction
notification offering to sell an extent of 1 Acre 62
cents in Survey No.196 in Kadamalaipudur, Acharapakka,
Maduranthagam Taluk. The petitioner had participated in
the auction and by a letter dated 17.10.2003, the
respondent had confirmed the highest bid of Rs.5,00,000/-

and requested the petitioner to remit the balance bid of Rs.4,50,000/-, after adjusting the EMD amount of Rs.50,000/-. It is submitted by the learned counsel for the petitioner that after the confirmation, the petitioner realised that the extent of the land was less and therefore, he was not in a position to remit the balance of the sale amount. Therefore, he had made requests to the respondent dated 06.04.2004, 17.02.2004 and 27.02.2004. Since the respondent failed to return the EMD amount, the present writ petition has been filed.

3. The learned counsel for the respondent on the other hand, submitted that pursuant to the auction, they have not received any representation from the petitioner herein. Even otherwise, if the grievance of the petitioner was that the land auctioned was lesser in extent, he had chosen to remit the balance bid of Rs.4,50,000/- through a cheque and had also given a requisition to have the sale deed in favour of his nominee. The cheque was subsequently dishonoured. Since the petitioner has chosen to proceed with the sale, inspite of his knowledge about the lesser extent of land and has failed to pay the balance of the sale amount, the action of the respondent in forfeiting the EMD amount of Rs.50,000/- would be justified.

4. I have given careful consideration to the submissions made by the respective counsels.

5. It is not in dispute that the respondent had issued an auction notification in connection with a property comprised in Survey No.195 measuring an extent of 1 Acre 62 Cents. A copy of the auction notification is produced before this Court. It is also not in dispute that the physical extent available was not 1.62 Acres, but 1.42 Acres. The only ground on which the respondent seeks to justify their action in forfeiting the EMD amount is that, though the petitioner had realised that the physical measurement of land was only 1.42 Acres and not 1.62 Acres, he had chosen to proceed by nominating a person for the purpose of having the sale deed registered in his favour and had also issued a cheque for the balance amount, which came to be dishonoured subsequently. Since the petitioner had chosen to condone the shortfall in the extent of the land by choosing to pay the amount through cheque, the forfeiture is sought to be justified. I am unable to accept such a submission.

6. The respondent Corporation has admittedly offered to sell 1 Acre 62 Cents in Survey No.195, when actually the extent was not physically available. The petitioner

had apparently quoted the sale amount of Rs.5,00,000/- for an extent of 1.62 Acres alone. Even assuming for a moment that the petitioner had not sent any representation seeking for refund of the EMD amount, in view of the mistake committed on the part of the Corporation, they are bound to return the EMD and the mistake cannot be put against the petitioner. Furthermore, just because the petitioner has chosen to nominate some person for the purpose of having the sale deed executed in his favour and also issued a cheque towards the balance sale consideration, that would not condone the mistake committed in the auction notification.

7. As such, there may not be any justification on the part of the respondent to forfeit the EMD amount. Since the petitioner has been deprived of the amount for the past 15 years, the petitioner would also be entitled to the interest on the amount.

8. In the light of the above observations, there shall be an direction to the respondent to return the EMD amount of Rs.50,000/- to the petitioner along with interest at the rate of 6% per annum from the date of the auction notification till the date of payment. The petitioner is also granted liberty to make an appropriate representation before the respondent enclosing a copy of this order. On receipt of such a representation, the respondent shall pass positive orders in the light of the above observations and return the EMD amount along with interest, within a period of 8 weeks from the date of receipt of copy of this order.

9. Accordingly, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

hvk
To
The Tamil Nadu Industrial
Investment Corporation Ltd.,
Special Recovery Branch Division II,
86, C&D, 2nd Main Road,
Ambattur Industrial Estate, Chennai - 600058.

+1cc to Mr.V.Raghavachari , Advocate SR.No. 25051

+1cc to Mr. M/s.Aiyar & Dolia, Advocate SR.No. 25037

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A.SK(16/04/2019)