

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1920 of 2019

and

C.M.P.No.13117 of 2019

The Tamil Nadu Industrial Investment
Corporation Limited,
Special Recovery Branch, Division II,
No.86, C & D, II Main Road,
Ambattur Industrial Estate,
Chennai - 600 058. ... Appellant/Respondent

Vs

M/s.Nilofar Traders
Represented by its Branch Manager,
No.172, Cuddalore Main Road,
Neyveli - 607 802. ...Respondent /Petitioner

PRAYER: Writ Appeal filed under Clause 15 of the Letters patent
against the order dated 18.03.2019 passed in W.P.No.34232 of
2005 on the file of this Court.

Prayer in W.P.No.34232 of 2005:

Writ Petition praying to 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 Appellant : Mr.K.Magesh

J U D G M E N T

(Order of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Tamil Nadu Industrial
Investment Corporation Limited challenging the order passed by
the learned Single Judge by which Rs.50,000/- was directed to be
returned by the appellant to the respondent which had been
deposited as earnest money deposit for taking part in the

auction of the sale of 1 Acre 62 Cents comprised in S.No.195 & 196 in Kadamalaipudur, Acharapakkam, Maduranthagam Taluk by the respondent.

2.The respondent had bought the property by participating in the auction and by letter dated 17.10.2003, the appellant confirmed the highest bid of Rs.5,00,000/-. A sum of Rs.50,000/- paid by the respondent towards earnest money deposit was adjusted and the balance amount of Rs.4,50,000/- was to be paid by the within a period of 30 days. However, the amount was not paid and hence, Rs.50,000/- which was deposited as earnest money deposit by the respondent was forfeited. Only to seek the return of the said amount, the Writ Petition was filed. On contest, the Writ petition was allowed against which the present appeal has been filed.

3.The learned Counsel for the appellant would submit that having been declared as a successful bidder for a sum of Rs.5,00,000/-, the entire amount should be paid within a period of 30 days, otherwise the earnest money deposit will be forfeited. In this case, auction was confirmed and in spite of the time granted, the respondent had not paid the amount and therefore, they are not entitled to the return of the earnest money deposit.

4.It is seen that though the respondent participated in the auction and quoted the highest amount as price, the respondent did not pay the balance amount of Rs.4,50,000/- as there was shortage of in the extent of land sold to him. Out of 1.62 Acres, 1.42 Acres alone is available and therefore, the respondent was not inclined to pay the balance amount.

5.The learned Single Judge noted that the initial offer made by the appellant was 1.62 Acres comprised in S.No.195 & 196 in Kadamalaipudur, Acharapakkam, Maduranthagam Taluk. However, on physical verification, 1.42 Acres alone was available and therefore, the respondent did not deposit the balance amount in view of the lesser extent of property than quoted by the appellant. If lesser extent is available, no prudent person will invest so much, that too to the tune of Rs.5,00,000/-. There is a justification for not proceeding with the sale proceeding by the respondent in view of the shortage of extent of land.

6.From the above, it is clear that there is a mistake committed by the appellant by offering entire land of 1.62 Acres whereas on physical verification, it is found to be 1.42 Acres alone and therefore, there is full justification on the part of the respondent in not paying the balance amount. Moreover,

entire mistake has been committed by the appellant and therefore, the respondent cannot be found fault with. However, Rs.50,000/- forfeited is illegal and the appellant is directed to return the same to the respondent within a period of two weeks from the date of receipt of the copy of this order failing which the Chairman-cum-Managing Director and Chief Financial Officer-cum-Chief Accounts Officer shall appear before this Court.

7.In the result, the appeal is dismissed with the above directions. No costs. Consequently, connected miscellaneous petition is closed. Post the matter for reporting compliance on 25.11.2019.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Tamil Nadu Industrial Investment
Corporation Limited,
Special Recovery Branch, Division II,
No.86, C & D, II Main Road,
Ambattur Industrial Estate,
Chennai - 600 058.

+1cc to Mr.Magesh, Advocate Sr.87699

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