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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.07.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.21585 of 2019
and W.M.P.Nos.20790 & 20793 of 2019

K.Venkatachalam

.. Petitioner

/versus/

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Executive Officer,
Town Panchayat,
Attayampatti,
Salem.

.. Respondents

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned notice dated 17.07.2019 issued by Respondent No.2 and quash the same and consequentially direct respondent No.2 to consider the petitioner's representation dated 16.07.2019.

For petitioner : Mr.S.Manuraj
For R1 : Mr.N.Inbanathan
Addl.Government Pleader
For R2 : Mr.A.Thamizharasan

O R D E R

Heard the learned counsel for the petitioner and the learned counsel for the respondents.

2. The case of the prosecution is that the petitioner was a successful bidder for the cycle stand at Salem Town Panchayat, Salem. After expiry of lease period, the 2nd respondent has decided to invite tender and made a publication for auction on 20.06.2019 which did not fructify. Therefore, the second and third publication for auction were also made by the 2nd



3. The grievance of the petitioner is that as per the Panchayat Rules there must be 10 clear days from the date of publication to the date of public auction. Whereas, the publication of the 2nd respondent for auction dated 15.07.2019, fixing the auction date 24.07.2019 was published in the local dailies only on 17.07.2019. Therefore, the mandatory requirements of 10 days has been violated.

"15. On the facts and circumstances, we find it just and reasonable to set aside the auctions that were conducted in respect of Karuvelam trees relating to 28 tanks in Thiruvadanai Block, relating to W.P.(MD) No.20591 of 2014, 10 tanks in R.S.Mangalam Block, relating to W.P.(MD) No.21070 of 2014, 92 tanks in Ramanathapuram Block relating to W.P.(MD) No.15294 of 2014, 23 tanks in R.S.Managalam Block relating to W.P.(MD) No.15593 of 2014 and 23 tanks in R.S.Managalam Block relating to W.P.(MD) No.21423 of 2014 and direct the respondents to conduct fresh auction, as per the Standing Orders of the Board of Revenue and Statning Order and the The Tamilnadu Panchayats (Procedure for Conducting Public Auction of Leases and Sales in Panchayats) Rules, 2001, by making publication in advance by providing not less than 10 days and maximum of 21 days time, after publication, as contemplated under the Rules and before the publication value of the trees should be assessed. If there is any earlier valuation, as stated in the affidavit dated 16.03.2015, filed by the Assistant Director of Rural Development (Panchayats), Ramanathapuram, for which fresh valuation is



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not required. It is also made clear that the writ petitioners are also entitled to participate in the auctions to be conducted. The respective Block Development Officers shall conduct the auction, under the guidance of the District Collector, Ramanathapuram, in the manner known to law, and complete the auction, by confirming the same based on the claim of successful bidders. After confirmation, the successful bidders are entitled to uproot the trees, as per the procedure known to law."

5. However in this case, the learned Additional Government Pleader would circulate the communication between the 2nd respondent and the Special Officer/Assistant Director, Panchayats, which indicates that in view of the circumstances prevailing, permission has been obtained by the second respondent from the higher authorities to fix the date for auction within the statutory period prescribed in the Panchayat Rules.

6. For the said purpose, the learned Additional Government Pleader would submit that the Tamilnadu Transparency Tender Procedure 2000, the minimum time for submission of tender shall alter with the permission of the superior officer if situation warrants. Accordingly, by invoking power conferred under Rule 20 of the Tender Transparency Rules 2000, the 2nd respondent has sought permission from the superior officer namely the Assistant Director Panchayat. With his permission, he has re-fixed the auction date. The notification was affixed in the Panchayat notice board on 15.07.2019. Publication was also effected in Dailies thereafter on 17.07.2019. Since there is no procedural violation, the learned Additional Government Pleader would submit that the notification is perfectly legal and there is no violation.

7. On considering the rival submissions and also decision of the the Division Bench of this Court relied on by the learned counsel for the petitioner, this Court is of the view that though the Panchayat Rules prescribes minimum time for submission of tenders/auction, the Tender Transparency Act which is a special Act will prevail over the General Act. The Special Act gives discretion to the tender calling authority to modify the minimum time required with the permission of the higher authorities. In this case, the second respondent has obtained the permission of his higher officer and thereafter only, he has re-fixed the auction date.



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8. In such circumstances, this Court finds no illegality or infirmity in the auction notification published by the second respondent. Hence, this Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

rpl
To

1.The Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Executive Officer,
Town Panchayat,
Attayampatti,
Salem.

+1 cc to Government Pleader Sr.No. 63392

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A.SK(28/08/2019)