



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.2155 of 2018

and

W.M.P. (MD) Nos.2406, 2407 of 2018

K.Baskaran

... Petitioner

Vs.

1.The Registrar of Co-operative Societies (Housing),
Tamil Nadu Housing Board Building Complex,
Nandanam, Chennai - 35.

2.The Deputy Registrar (Housing),
Daniel Thomas Nagar, Thanjavur.

3.The President,
T.834, Shanmuga Nagar,
Co-operative Building Society Limited,
Kannan Nagar, Thanjavur.

4.The Secretary,
T.834, Shanmuga Nagar,
Co-operative Building Society Limited,
Kannan Nagar, Thanjavur.

5.M.Ravi,
Secretary,
T.834, Shanmuga Nagar,
Co-operative Building Society Limited,
Kannan Nagar, Thanjavur.

6.Amaranathan
(R6 is impleaded as per order of this Court,
dated 25.03.2019 in W.M.P. (MD)
No.14066 of 2018)

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, call for the records relating to the invitation of tender with regard to sale of property situated in Kumarapuram, Cholan Nagar, Mannargudi, Tender No.2/ MCNHS/3248/2018, dated 13.01.2018 issued by the fourth respondent herein and quash the same as illegal and arbitrary and further direct the respondents 1 to 4 to receive Rs.450/- per sq.ft, from the petitioner herein for the above said property and finalise the tender process in favour of the petitioner or direct the respondents 3 and 4 to conduct a fresh auction in accordance with law.



For Petitioner : Mr.P.Ganapathi Subramanian
For R-1 to R-4 : Mr.R.Sethuraman
Special Government Pleader
For R6 : Mr.M.P.Senthil
For R-5 : No Appearance

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ORDER

T.834, Shanmuga Nagar, Co-operative Building Society Limited, Kannan Nagar, Thanjavur is a Society registered under the provisions of Tamil Nadu Co-operative Societies Act, 1983. It had availed loans from the Tamil Nadu Co-operative Housing Federation, Chennai. It is therefore selling the vacant house plots owned by it. The Society sold Plot Nos.48 and 49 situated in Survey No.53/2A1 in Cholan Nagar, Kumarapuram Village, Mannargudi Taluk, Thiruvarur District for a sum of Rs.11,70,000/- in favour of the sixth respondent/Amaranathan. This sale is impeached in this writ petition at the instance of the writ petitioner.

2.The Society as well as the purchaser/Amaranathan have filed separate counter affidavits. The purchaser/Amaranathan submits that he is a Member of the Society. He claims to have come across the notification about the tender process in the Government Website and the advertisement issued by the Society in 'Dinaboomi' Tamil Daily on 31.01.2018 at page No.7. Since the writ petitioner's tender was the highest, it was accepted and sale deed dated 02.03.2018 was executed in his favour vide Doc.No.859/2018 on the file of the Sub-Registrar Office, Mannargudi on 02.03.2018. He is presently in possession and enjoyment of the said plots which continue to be vacant.

3.The learned counsel appearing for the Society also contended that all the usual formalities have been adopted in this case and that the petitioner was not even a participant in the tender process and that therefore he cannot maintain this writ petition. It is further alleged that the writ petitioner had been harassing the Society by filing successive writ petitions.

4.The learned counsel appearing for the respondents also claimed that the writ petitioner is not serious about his case and that his case only is to embarrass the respondents.

5.It is not in dispute that the two plots were sold by the Society for a sum of Rs.11,70,000/- . This Court before proceeding further wanted to test the *bonafide* of the writ petitioner. It wanted him to bring a Demand Draft for a higher figure. The petitioner informed the Court that he is serious about purchasing the plots in question and proved that he is a genuine litigant. He brought three Demand Drafts for a sum of Rs.14,50,000/- favouring the respondent/Society. The Original Demand Drafts bearing Nos.537339, 841632 and 772058 drawn on Canara Bank, Soorakkottai, State Bank of India, Thanjavur and State Bank of India,



Ranthattankudi (Thanjvaur), respectively dated 19.03.2019, in the name of the respondent/Society were produced before me. I am satisfied that the petitioner is serious about pursuing the case.

6. The learned counsel appearing for the petitioner pointed out that when the Society wanted to sell its plots on the earlier occasions, advertisement was made in 'Dinamalar'. When the Society wanted to float any Tender process it used to make publication in 'Dinamalar' Tamil Daily only. One such advertisement dated 07.08.2014 published in 'Dinamalar' is enclosed in the typed set of papers.

7. When an immovable property like a plot of land is sought to be sold, it must be published in daily having wide circulation in the locality. This Court can take judicial notice of the fact that 'Dinamalar' and 'Dinathanthi' are such dailies having good circulation in the locality. Certainly 'Dinaboomi' cannot come under that category. That is why, the tender process floated by the respondent/Society elicited only two responses. It is not the case of the Society that there were a number of participants.

8. When Kumbakonam Municipality wanted to float a Tender for awarding license to maintain and collect the charges for the use of the dormitory building, and published the notification in 'Dinaboomi', the Hon'ble Division Bench in W.P.(MD)No.24206 of 2018, dated 20.12.2018, set aside the same and directed the Municipality to issue a fresh tender notice to be published in 'Dinathanthi'. Another Hon'ble Division Bench in the decision in W.P.No.3789 of 2017, dated 18.08.2017 while dealing with a SARFAESI case held that 'Dinaboomi', Salem Edition was listed under small dailies and had 11,272 circulations only. It was not a medium or big Daily. It cannot be considered as a paper having wide circulation in Salem District which has population of 3,48,256/- as per 2011 census.

9. Proof of the pudding is in the eating. The fact that the writ petitioner has offered a sum of Rs.2,80,000/- more than what was offered by the writ petitioner. It indicates that the Society has not obtained the best possible price for its property. The learned counsel appearing for the purchaser contended that he is the *bonafide* purchaser. The Society had issued a notification, advertising sale of its plots. The sixth respondent took part in the entire process. He remitted the amount and he had incurred all the expenses including Registration. He cannot be made a casualty in the cross fire between the writ petitioner and the Management of the Society.

10. I find force in his submission. Of course, the writ petitioner would allege that the Management of the Society is being conducted in an irregular manner and that the sixth respondent is a friend of the Office bearers of the Society and that only to oblige him, the transaction has been concluded. I do not want to go into this part of the allegation. I am of the view that the interest of



either party can be met by directing the Society to adopt the following course of action.

(i) The second respondent is directed to hold a fresh auction on 29.03.2019 at 03.00 p.m in his office. On the said date, the petitioner and the sixth respondent/Amaranathan alone will be the participants. The sixth respondent can be called upon to match the offer made by the writ petitioner.

(ii) If the sixth respondent is not willing to match the writ petitioner's offer, the second respondent is directed to issue proceedings for cancelling the impugned tender process that culminated in favour of the sixth respondent. The amount of Rs.14,50,000/- offered by the writ petitioner shall be accepted by the respondent/Society and a deed of sale shall be executed in favour of the writ petitioner.

(iii) The jurisdictional Sub Registrar shall make an entry regarding the cancellation of the sale transaction in favour of the sixth respondent. Out of the consideration remitted by the writ petitioner, the Society will refund the sixth respondent the sale consideration in full together with the expenses incurred by him inclusive of interest at the rate of 6% per annum.

(iv) If the sixth respondent is willing to match the petitioner's offer, then there will be a bid between the two and whoever is the highest bidder will be declared as the purchaser.

(v) If the sixth respondent is the highest bidder, the sixth respondent will be called upon to pay the difference amount and there is no need to execute any fresh deed of sale.

(vi) If as a result of the bid in between the sixth respondent and the writ petitioner, a higher amount is realized, the course of auction indicated above shall be followed.

11. I am convinced that even though the case of the writ petitioner is accepted, the sixth respondent would not suffer actual loss. The Society would have also gained substantially. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

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Tamil Nadu Housing Board Building Complex,
Nandanam, Chennai - 35.



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4.The Secretary,
T.834, Shanmuga Nagar,
Co-operative Building Society Limited,
Kannan Nagar,
Thanjavur.

+1cc to Mr.M.P.Senthil, Advocate, SR.No.56492

+1cc to Mr.P.Ganapathi Subramanian, Advocate, SR.No.56513

+1cc to Special Government Pleader, SR.No.56512

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SP/28.03.2019/5P/8C